167-664

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~482~~. 190

THE UNITED STATES, APPELLANT,

vs.

JAMES C. REED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED NOVEMBER 15, 1894.

(15729.)

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To the Honorable WILLIAM J. WALLACE,
Judge of the Circuit Court of the United States
for the Southern District of New York.

The petition of James C. Reed respectfully presents:

First. That your petitioner resides at the city of New York, in the county and State of New York.

Second. That on the seventh day of July, in the year eighteen hundred and eighty-four, your petitioner was duly appointed shipping commissioner for the United States of America at the port of New York, under and by virtue of an act of Congress, entitled "An act to remove certain burdens on the American merchant marine and encourage the American foreign carrying trade, and for other purposes," which said act was approved on the twenty-sixth day of June, A. D. 1884.

Third. That your petitioner thereafter and on the said seventh day of July, 1884, duly qualified as and entered upon the discharge of the duties of the office of such shipping commissioner at the port of New York, and has continuously ever since held such said office and discharged the duties thereof.

Fourth. That thereafter and on or about the twenty-sixth day of August, in the year eighteen hundred and eighty-four, for the Secretary of the Treasury of the United States of America, under and pursuant to the terms of said act of Congress, determined and fixed the compensation of your petitioner as such said shipping commissioner, at the sum of four thousand dollars per annum, and in addition thereto one-half of the net surplus of the receipts of the office, after the payment of salaries and expenses authorized, not to exceed, however, the maximum sum of five thousand dollars in any one year.

Fifth. That thereafter and during the fiscal year commencing on the first day of July, 1884, and ending on the thirtieth day of June, 1885, the net surplus of the receipts of the shipping commissioner's office at the port of New York from fees, after payment of all salaries and expenses authorized by law, was the sum of three thousand nine hundred and ninety-one dollars and sixty-eight cents, of which said sum your petitioner became and was entitled to and did receive the sum of one thousand dollars, in addition to the sum of four thousand dollars specifically provided by the Secretary of the Treasury, on the twenty-sixth day of August, A. D. 1884.

Sixth. That thereafter and during the fiscal year commencing on the first day of July, 1885, and ending on the thirtieth day of June, A. D. 1886, the net surplus of the receipts of the shipping commissioner's office at the port of New York from fees, after payment of all salaries and expenses authorized by law, was the sum of three thousand eight hundred and fifty-two dollars and seventeen cents, of which said sum your petitioner became and was entitled to and did receive the sum of one thousand dollars, in addition to the sum of four thousand dollars specifically provided by the Secretary of the Treasury, on the twenty-sixth day of August, A. D. 1884.

Seventh. That thereafter the Congress of the United States
7 3 of America passed an act entitled "An act to abolish certain fees for official services to American vessels and to amend the laws relating to shipping commissioners, seamen, and owners of vessels, and for other purposes" (vol. 24, p. 79), which said act was approved on the nineteenth day of June, 1886, whereby the laws requiring fees to be paid to the United States of America for services rendered to American vessels by the shipping commissioner were repealed, and provided that shipping commissioners who were paid wholly or partly by fees should be allowed and paid out of any money in the Treasury not otherwise appropriated such compensation for their services as they
8 received prior to the passage of said act, which said act went into effect on the first day of July, A. D. 1886.

Eighth. That during the fiscal years commencing July 1st, 1886, and ending March 1st, 1891, the net surplus of the receipts of the shipping commission office at the port of New York, from service fees, after payment of all salaries and expenses incident to the proper conduct of the office and the discharge of the duties thereof, was the sum of thirty-three thousand seven hundred and fifty-two dollars, of which said sum your petitioner became and was entitled to have and receive in addition in the sum of four thousand dollars, the sum of one thousand dollars each year, and to be allowed and paid all of the
9 expenses necessary and incident to the maintenance of an office for the transaction of the business of shipping commissioner at the port of New York.

And your petitioner further shows to your honor that he was not paid nor allowed the necessary and ordinary expenses incident to the maintenance of the office of a shipping commissioner at the port of New York; but, on the contrary, he was obliged and did pay or cause to be paid out of his private funds sundry large sums of money for the rental of offices, the care and maintenance thereof,
10 4 and various other expenses incident to the proper transaction of the business of a shipping commissioner at the port of New York, which are more specifically set out in the bill of particulars annexed and made part of this petition.

Ninth. That after the twentieth day of May, 1886, and until or about the tenth day of April, in the year eighteen hundred and ninety, your petitioner, as such shipping commissioner, was provided by the United States of America with suitable offices, clerical assistance, books, blanks, fuel, office fixtures, repairs, and every facility for the proper discharge of the duties of his office as such shipping com-
11 missioner, other than stationery, use of telephone, Maritime Register, space in Safe Deposit Vault, ice for ice water, and was compelled and did pay large sums of money therefor, together with charges for freight on official books and blanks, and for account books.

Tenth. That on the fifth day of April, A. D. 1890, your petitioner was required by the Secretary of the Treasury to remove from the offices theretofore assigned and provided by the Government for the use of your petitioner as shipping commissioner, and it thereupon became and was necessary to procure other offices suitable for the
12 discharge of the duties imposed by law upon your petitioner as ship-

ping commissioner. That thereupon your petitioner was authorized and directed by the Secretary of the Treasury to hire such necessary offices, and did thereafter procure for the use of the United States of America offices and storage rooms in which to conduct the duties of the office of shipping commissioner, and the storage of deceased seamen's effects, on Pearl street, in the city of New York, at an annual rental of fifteen hundred dollars.

Eleventh. That thereafter and on or about the tenth day of
5 April, in the year eighteen hundred and ninety, in compliance 13
with the direction of the Secretary of the Treasury, your petitioner removed the office of the shipping commissioner at the port of New York to the premises above referred to and now occupied on Pearl street, in the said city of New York.

Twelfth. That the cost of moving into such said offices, fittings therefor, furniture, stationery, use of telephone, Maritime Register, freight charges, ice for the use of clerical help, telegraph fees upon official messages, repairs to office furniture, rent of safe deposit vault, rent of said premises on Pearl street, from said tenth day of April, A. D. 1890, to the first day of March, A. D. 1891, amounts in the 14
aggregate to the sum of four thousand and thirty-three dollars and seventy-one cents, and of which a bill of particulars is hereto annexed, all of which expenses and charges were necessarily incurred in the discharge of the duties of petitioner's said office, and were and are reasonable and fair charges, made necessary by reason of the direction of the Secretary of the Treasury to move the offices of the shipping commissioner from the premises theretofore assigned, and the proper discharge of the duties imposed by law upon your petitioner as such said shipping commissioner during said period of time, to wit, from the first day of July, A. D. 1886, to the first day of March, A. D. 1891. 15

Thirteenth. That your petitioner has paid all of such said charges, aggregating in all the sum of four thousand and thirty-three dollars and seventy-one cents, out of his own private funds, and has duly demanded payment thereof from the proper Department of the Government of the United States of America at the city of Washington, and payment thereof has been refused, on the ground alleged that the Congress of the United States of America has failed to make an appropriation for the payment thereof, notwithstanding the Secre-
6 tary of the Treasury has several times admitted the propriety 16
of your petitioner's said disbursements, and has recommended to the Congress of the United States of America that an appropriation be made to cover your petitioner's said claim, in the following language:

TREASURY DEPARTMENT,
Washington, D. C., December 8, 1890.

To the Speaker, House of Representatives:

SIR: I have the honor to invite your attention to the fact that there 17
is no appropriation for the expenses of the offices of United States shipping commissioners. Section 27 of the act of June 26, 1884, authorized the Secretary of the Treasury to pay expenses of shipping offices, but this provision was not followed in section 1 of the act of

June 19, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of his clerks, without reference to other expenses. The maximum compensation allowed to any shipping commissioner under the law is $5,000, where the fees reported are sufficient for the pay-
18 ment of that amount, and the payment by the commissioner therefrom of the cost of rent, heating, and other expenses might take a large portion of the amount.

A copy of a letter, dated October 15, 1890, from the United States shipping commissioner at New York, is inclosed herewith, as showing his objections to the existing legislation upon the subject.

Respectfully,

W. WINDOM, *Secretary.*

19 7 TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 14, 1891.

To the Speaker, House of Representatives:

SIR: Referring to the communication of the Secretary of the Treasury of December 8, 1890, inviting the attention of Congress to the fact that there has been no provision for the payment of the expenses of the office of the United States shipping commissioners since June 30, 1886, and to the copy of a letter from the shipping commissioner at New York regarding the expenses of that office
20 (accompanying said communication), I have the honor to state that, in my opinion, a necessity exists for an appropriation to cover such expenses, and I respectfully recommend that the following clause be inserted in the general deficiency bill:

Five thousand dollars, or so much thereof as may be necessary to reimburse the shipping commissioner at New York for his expenditures for office fixtures, books and stationery, heating apparatus and fuel, telephone service, office rent, and other expenses connected with the administration of his office, from the first day of July, eighteen hundred and eighty-six (at which time the provision for the payment
21 thereof by the Treasury Department was omitted in the act of June nineteenth, eighteen hundred and eighty-six), to the first day of July, eighteen hundred and ninety-one; and also the further sum of two thousand five hundred dollars, or so much thereof as may be necessary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period, such expenditures to be audited and such reimbursement to be made under the direction of the Secretary of the Treasury.

Respectfully, yours,

A. B. NETTLETON,
Acting Secretary.

22 8 Wherefore, your petitioner asks judgment against the said United States of America for the sum of four thousand and thirty-three dollars and seventy-one cents, with interest on four hundred and eighty-eight dollars and eighty-seven cents thereof, from the thirtieth day of June, A. D. 1887; and on three hundred and

eighty-one dollars and seventy-four cents thereof, from the thirtieth day of June, A. D. 1888; and on four hundred and fifteen dollars and seventy-seven cents thereof, from the thirtieth day of June, A. D. 1889; and on fifteen hundred and eighty-two dollars and fifty-nine cents thereof, from the thirtieth day of June, A. D. 1890; and on eleven hundred and sixty-four dollars and eighty-four cents thereof, 23
from the first day of March, A. D. 1891; and such other relief in the premises as to this honorable court may seem just and proper.

JAMES C. REED, *Petitioner.*

G. E. P. HOWARD,
Attorney for Petitioner, 35 *Wall Street, New York City.* 24

9 BILL OF PARTICULARS. 25

Expenses paid by commissioner.

July 1, 1886, to July 1, 1887:			
Stationery	$277.67		
Telephone	150.70		
Maritime Register	50.00		
Ice	10.00		
		$488.87	
July 1, 1887, to July 1, 1888:			
Stationery	$190.20		
Telephone	150.35		
Maritime Register	25.00		
Ice	11.00		
Freight on blanks	5.19		
		381.74	26
July 1, 1888, to July 1, 1889:			
Stationery	$213.52		
Telephone	151.40		
Maritime Register	25.00		
Ice	8.14		
Freight on blanks	7.71		
Safe deposit box	10.00		
		415.77	
July 1, 1889, to July, 1890:			
Stationery	$107.02		
Telephone	113.50		
Maritime Register	25.00		
Ice	17.20		
Freight on blanks	5.99		
Furniture	200		
Office rent	276.66		27
Storage rent	66.66		
Office fixtures	751.58		
Moving office	216.00		
Telegram	4.88		
Repairs	2.00		
		1,582.49	

July 1, 1890, to March 1, 1891:

Stationery	$126.18	
Maritime Register	25.00	
Freight on blanks	3.66	
Safe deposit box	10.00	
Office rent	800.00	
Storage rent	200.00	
		$1,164.84
		$4,033.71

City and County of New York,
Southern District of New York, ss:

James C. Reed, being duly sworn, deposes and says: That he is the petitioner named in the foregoing petition; that said petition is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

James C. Reed.

Sworn to before me this 27th day of March, 1891.

John A. Shields,
U. S. Commissioner, S. D. of N. Y.

Registered letter No. 19497, P. O. New York, N. Y., received Mar. 27, 1891, of G. E. P. Howard, 35 Wall st., a letter addressed to W. H. H. Miller, Wash., D. C.

C. Van Cott, *P. M.*
Per M.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed, petitioner, agst. The United States of America, defendant. Petition. G. E. P. Howard, atty. for petitioner, 35 Wall st., N. Y. Service of a copy of within admitted, March 27th, 1891. Edward Mitchell, U. S. attorney. U. S. circuit court. Filed Mar. 27, 1891. John A. Shields, clerk.

11 United States circuit court, southern district of New York.

James C. Reed, petitioner,
vs.
The United States of America, defendant.

The United States of America, by Edward Mitchell, its attorney for the southern district of New York, for its answer to the petition of James C. Reed.

Denies that it has any knowledge or information sufficient to form a belief as to any or all the allegations in said petition contained, and therefore denies the same.

Wherefore the said United States demands judgment that the petition herein be dismissed with costs.

Edwd. Mitchell,
U. S. Atty.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Maxwell Evarts, being duly sworn, deposes and says, that he is an assistant United States attorney for the southern district of New York, and has charge of the above-entitled action; that he has read the foregoing answer and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters
12 therein stated to be alleged upon information and belief, and 34
that as to those matters he believes it to be true.

MAXWELL EVARTS.

Subscribed and sworn to before me this 5th day of June, 1891.

THOMAS GREENWOOD,
Notary Public, N. Y. City & Co.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed versus United States. Answer. Edward Mitchell, United States attorney, attorney for defendant. Due service of a copy of the within is hereby admitted, New York, June 9th, 1891. 35
G. E. P. Howard, attorney for plaintiff. To G. E. P. H., attorney for plaintiff. U. S. circuit court. Filed June 10, 1891. John A. Shields, clerk. 36

13 Circuit court of the United States for the southern district of 37
New York.

JAMES C. REED, PLAINTIFF,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT.

The above-stated cause being at issue and regularly upon the calendar of this court for trial, and the respective parties thereto consenting, it is 38

Ordered, That the issues in the above-stated cause be, and the same hereby are, referred to John A. Shields, esquire, clerk of this court, as referee, to take the evidence offered by the plaintiff and defendant and to report the same, together with his opinion, to the court with all convenient speed.

WM. J. WALLACE.

The entry of the above order in the above cause is hereby consented to. 39

New York, February 16, 1893.

G. E. P. HOWARD,
Atty. for Plaintiff.

EDWD. MITCHELL,
U. S. Atty.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed, plff., versus United States of America. Order of reference. Edward Mitchell, United States attorney, attorney for defendant. U. S. circuit court. Filed Feb. 16, 1893. John A. Shields, clerk.

40 14 United States circuit office, southern district of New York.

JAMES C. REED
vs.
THE UNITED STATES OF AMERICA.

41 Appearances: John A. Shields, esq., referee; for the petitioner, G. E. P. Howard, 35 Wall street, New York City; for the United States, Charles D. Baker, assistant U. S. attorney.

JAMES C. REED, being duly sworn on behalf of the petition:

Q. Are you the petitioner in these proceedings against the U. S.?
A. I am.
Q. Where do you reside?
A. New York City.
Q. You are the U. S. shipping commissioner at the port of New York?
A. I am.
42 Q. How long have you been such?
A. Since May 12th, 1884.
Q. Have you received more than one appointment as U. S. shipping commissioner at this port?
A. Yes.
Q. By whom were you first appointed in May, 1884?
A. By the U. S. circuit court for the southern district of New York.
Q. You qualified as such U. S. shipping commissioner?
A. I did.
Q. And entered upon the discharge of your duties as such?
A. Immediately.
43 15 Q. How long did you continue to act as shipping commissioner under that appointment?
A. Until the first day of July, 1884.
Q. Were you reappointed U. S. shipping commissioner for this port after this? If so, by whom?
A. Yes; I was subsequently appointed by the Secretary of the Treasury.
Q. Then you have continued in office as U. S. shipping commissioner continuously from that day of your appointment by the U. S. circuit court, from May, 1884, down to the present time?
A. I have.
Q. By what authority, if you know, did the circuit court appoint you U. S. shipping commissioner at this port?
44 A. Under the act of June 7th, 1872.
Q. By what authority did the Secretary of the Treasury appoint you U. S. shipping commissioner?
A. Under the act of June 26th, 1884, commonly known as the Dingley bill.
Q. Did you qualify as shipping commissioner under the appointment made by the Secretary of the Treasury?
A. I did.

Q. And continued to discharge the duties of the office as U. S. shipping commissioner at this port ever since such appointment, have you not?

A. I have.

Q. Are you acquainted with the compensation received by the U. S. shipping commissioner for the port of New York under the acts of 1872 and 1884? If so, state what compensation was allowed and 45
what expenses incident to the conduct of the office of the shipping commissioner and the discharge of the duties thereof were allowed by the circuit court under the act of 1872.

A. The compensation allowed the shipping commissioner at this port was $5,000 per annum under the act of 1872.

Q. And under the act of 1884, what was the compensation of the U. S. shipping commissioner?

A. The same; because the act of 1884 provided that ship-
16 ping commissioners should be paid such compensation as the 46
Secretary of the Treasury should determine.

Q. Did the Secretary of the Treasury of the U. S. fix the compensation of the U. S. shipping commissioner at this port? If so, at what sum, and when?

A. Yes; by letter from the commissioner of navigation, dated Sept. 12th, 1884, and I was informed that on the 26th of August the Treasury Department determined to allow me compensation as shipping commissioner at the rate of $4,000 per annum and one-half of the net surplus of the fees collected after the payment of salaries and expenses authorized, and such compensation not to exceed the maximum limited by law.

Q. Have you that letter with you? 47

A. I have.

Q. You will produce it.

(Witness produces letter.)

Mr. HOWARD. I now offer this letter in evidence, and it will be marked petitioner's Exhibit No. 1, of this date. I now read this letter in full.

TREASURY DEPARTMENT, BUREAU OF NAVIGATION.

JAMES C. REED, Esq.,
U. S. Shipping Commissioner, 187 *Cherry Street*,
New York City.

SIR: The Department, on the 26th ultimo, determined to allow you 48
compensation as shipping commissioner at the rate of $4,000 per annum and one-half of the net surplus of the fees collected by you after the payment of salaries and expenses authorized, such compensation not to exceed the maximum limited by law, it being understood that from such compensation you shall pay all your official expenses except for employees and rent, and that the compensation and all expenses shall not exceed the aggregate of the fees collected and deposited during the year.

You are, therefore, requested to forward an account of your
17 receipts and estimated expenditures for the months of July and 49
August and each month thereafter, showing on the debit side

the fees deposited and upon the credit side the expenses in detail to be paid from the general fund for employees and rent and your compensation, which will include the expenses to be borne by yourself. These latter expenses, however, will be stated in detail in a separate column, as provided for in the inclosed form.

Please certify, at the bottom of the account, that it is correct.

A certificate should accompany the account, from the clerk of the U. S. circuit court, showing that bond has been filed by you, and
50 oath taken as prescribed by law.

In addition to the account above mentioned, you will forward the monthly returns required by the circular of July 21, 1884, on forms 16, 18, and 19, general customs catalogue, unless you have already done so.

An appointment as disbursing clerk is transmitted herewith, and a form of bond, which you will please execute, and return to this office with your account.

Very respectfully,

T. B. SANDERS,
Deputy Commissioner.

51 (3 inclosures.)

Q. Do you know, and if so, state what expenses incident to the conduct of the office of the shipping commissioner at the port of New York were allowed by the circuit court under the act of 1872.

A. All expenses incident to the business of the office, salaries, salary of the commissioner, deputies, clerks, runners, janitor, rent, fuel, lights, printing, stationery, postage, books of account, blank forms, ice, subscription to the "Maritime Register," telegrams, furniture, office fixtures, repairs.

52 18 Q. What was the practice, if you know, in relation to the allowance and payment of expenses incurred by the shipping commissioner at the port of New York, in discharge of his duties as such commissioner, subsequent to July 1st, 1884, under the appointment of the Secretary of the Treasury?

A. They allowed me to charge in my monthly account against the fees earned, the salary of the commissioner, and the clerks, runners, the janitor, office rent, and for certain printing, telegrams, draping the building on the death of General Grant, purchase of certain blanks, blank forms, when the stock I had purchased previous to July, 1884, had been exhausted.

53 Q. Do you know what was the aggregate amount of fees received by the shipping commissioner at the port of New York, for the shipping and discharging of seamen and other duties executed by you under and pursuant to the act of Congress, relating to the duties of the U. S. shipping commissioner, between the 1st day of July, 1884, and the 30th day of June, 1885? And if yea, state what they were.

A. The fees received amounted to $19,126.75.

Q. Do you know what was the aggregate expense incident to the discharge of your duties as shipping commissioner, between the 1st day of July, 1884, and the 30th day of June, 1885? If yea, state.

54 A. $16,135.07.

Q. What was the aggregate amount of expenses incurred above for? State generally.

A. Salary of the commissioner and clerks, rent, printing, etc.

Q. And the entire amount was necessarily incurred in the proper discharge of your duties as U. S. shipping commissioner, was it not?

A. It was.

Q. Did you render accounts to the Secretary of the Treasury, of the year beginning July 1st, 1884, and ending the 30th of June, 1885?

A. Yes, sir.

Q. And did you likewise render accounts to the Secretary
19 of the Treasury of the receipts and expenses incident to the 55
conduct of your office during the year, between the 1st day of July, 1885, and the 30th day of June, 1886?

A. Yes, sir.

Q. What was the net surplus of the receipts of your office as U. S. shipping commissioner, over and above the necessary expenses thereof, between the 1st day of July, 1884, and the 30th day of June, 1885?

A. $2,991.68.

Q. Were all the expenses incurred by you in the discharge of your duties as shipping commissioner during the year, between the 1st day of July, 1884, and the 30th day of June, 1885, allowed by the Secretary of the Treasury. And if not, state what items on your accounts for expenses and disbursements were disallowed. 56

A. They were all allowed.

Q. Do you know what was the aggregate amount of fees received by you as shipping commissioner for the port of New York, for shipping and discharging seamen, and the other duties executed by you under and pursuant to the act of Congress in reference to the duties of shipping commissioner, between July 1st, 1885, and the 30th day of June, 1886? If yea, state what they were.

A. The amount of fees collected was $19,322.

Q. Do you know what was the aggregate expenses of your office as U. S. shipping commissioner of the port of New York, between the 1st day of July, 1885, and the 30th day of June, 1886? If yea, state. 57

A. Yes, I know; $16,469.83.

Q. What was those expenses incurred for? State generally.

A. The same as in the previous year.

Q. And did you render accounts to the Secretary of the Treasury of the U. S., of your receipts and expenses?

A. Yes, sir.

Q. And were the accounts rendered between the 1st day of July, 1885, and the 30th day of June, 1886, audited and allowed?

A. They were.

Q. What was the net surplus, if you know, of the office of the U. S. shipping commissioner at this port, over and above expenses
20 and disbursements thereof, between the 1st day of July, 1885, 58
and the 30th day of June, 1886?

A. I know; $2,852 17.

Q. And were these expenses, as reported in your reports to the Secretary of the Treasury, audited and allowed?

A. They were.

Q. During the year beginning July 1st, 1884, and ending the 30th of June, 1885, what compensation was allowed and paid to you as U. S. shipping commissioner by the United States?

A. $5,000.

Q. State what compensation was allowed and paid to you by the United States, for your services as U. S. shipping commissioner at this port, between the 1st day of July, 1885, and the 30th day of
59 June, 1886.

A. $5,000.

Q. Since the act of 1884, commonly known as the Dingley bill, has there been any change or amendment of the law in relation to shipping commissioners; and if so, what change has been made, and when did it go into effect?

A. Yes; the law has been amended, and the amendment went into effect July 1st, 1886. There was no change in the compensation allowed and to be paid to the shipping commissioners by that amendment. The only change made in relation to the office by the United States was to do away with the collection of the fees theretofore charged for shipping and discharging and paying off of seamen.
60 Under that act, to wit, the act of 1886, all fees were abolished, although the services to be rendered by shipping commissioners were continued, as required by previous acts of Congress. Under this act of 1886, instead of receiving cash for services rendered to the masters and owners of vessels and to seamen, a service voucher is required by the Secretary of the Treasury, to be obtained by the shipping commissioner from the master or agent of each and every vessel to whom services are rendered. The accounts are made up each month, showing in detail, accompanied by these service vouchers, the amount
61 21 and value pursuant to the fee bill theretofore enacted by Congress, all the services rendered by the U. S. shipping commissioner at this port. The compensation of the shipping commissioner was not changed; but the act specifically provided that the compensation theretofore allowed and paid to shipping commissioners should be continued. I have with me a blank form of service voucher.

(Service voucher offered in evidence and marked Petitioner's Exhibit No. 2.)

(Form 1628.)

No. .

62 Services by U. S. shipping commissioner at to vessel bound to arrived from .

(This voucher is to be forwarded to the Bureau of Navigation.)

	Number.	Rate.	Value of service.
Seamen shipped, foreign (generally)			
Seamen shipped coastwise, or to Canada, New Foundland, West Indies, or Mexico.....			
Seamen discharged, foreign (generally).....			
63 Seamen discharged coastwise, or from Canada, New Foundland, West Indies, or Mexico...			

PORT OF , 189 .

I certify that the above statement is correct.

Master or Agent.

"This voucher, being the evidence on which money is to be paid by the Government, should be carefully examined by the master before he signs it. None of the services charged are to be paid by the master."

22 Q. This act you have just referred to is the act of the 19th of June, 1886, which is found in Vol. XXIV, page 79, of the U. S. Statutes at Large. What was the object of making these detailed reports to the Secretary of the Treasury, of the services rendered and the value thereof, after the act of June 19th, 1886? 64

A. It was in order that the Secretary of the Treasury might gain a knowledge of the value of the work performed at the various ports by the different shipping commissioners.

Q. Subsequent to the 1st day of July, 1886, after the act of June 19th, 1886, went into effect, were you required to render a report to the Secretary of the Treasury of the amount of work done and service 65 fees earned, and also of the expenses incident and necessary to the proper conduct of your office as shipping commissioner at the port of New York?

A. I was; monthly reports on the last day of each month.

Q. Do you know, and if so state, what was the aggregate amount of service fees reported as earned by you as shipping commissioner, between the 1st day of July, 1886, and the 1st day of March, 1891?

A. I do; they were $101,480.50.

Q. If you know, state what was the aggregate of the necessary expenses incident to the proper discharge of the duties of the office and the conduct of the business, under the requirements of the stat- 66 utes of the United States and regulations of the Secretary of the Treasury, between the 1st day of July, 1886, and the 1st day of March, 1891.

A. I do know; the necessary expenses amounted to $76,685.50.

Q. State what this amount of aggregate expenses covered generally.

A. Salaries, office rent, rent of storage rooms for deceased seamen's effects, books of account, special blanks necessary to the proper conduct of so large an office, stationery, ice, rent of box in safe deposit vault, subscription to Maritime Register, freight on books
23 and blanks supplied by the Government from Washington, 67 telephone, office fixtures, repairs, cost of moving the office records, at that time numbering over 151,000 documents, and office furniture, from the U. S. Barge Office building to No. 25 Pearl street, and sailors' effects from U. S. Barge Office to 19 Pearl street.

Q. What was the aggregate of the surplus of service fees earned and reported by you to the Secretary of the Treasury, over and above the expenses incident and necessary to the proper conduct of your office, between the 1st day of July, 1886, and the 1st day of March, 1891?

A. $24,795.

Q. Was the entire amount of the expenses, which you have stated to have been necessary and incident to the proper conduct of the busi- 68 ness of your office, between the 1st day of July, 1886, and the 1st day of March, 1891, allowed you by the Secretary of the Treasury; and if not, why?

A. No; they were not, because the Secretary of the Treasury stated that Congress had made no appropriation.

Q. Has your compensation and allowances been changed, or altered, or modified by the Secretary of the Treasury, or any other official of the Government of the United States, since the same was fixed by the Secretary of the Treasury in the year 1884 down to the present day?

69 A. It has not been modified or changed. It remains at $5,000 per annum.

Q. State, in detail, what expenses incurred by you as U. S. shipping commissioner, which were proper and necessary for the conduct of the shipping commissioner's office at this port, have not been allowed by the Secretary of the Treasury, and the amount.

A. I now read from my records the expenses incurred by me as U. S. shipping commissioner at the port of New York, which have not been paid to me by the Government of the United States, between the 1st day of July, 1886, and the 1st day of March, 1891.

70 24 These items, however, do not include any expenses incurred by me for coal, for the heating of the office occupied by me as U. S. shipping commissioner during that period of time, and sundry minor disbursements, which items I shall endeavor to supply at the close of this case, and ask leave to amend the aggregate amount thereof of my claim.

Expenses paid by commissioner.

July 1st, 1886, to July 1st, 1887:		
Stationery	$277.67	
Telephone	150.70	
Maritime Register	50.00	
Ice	10.00	
71		$488.87
July 1st, 1887, to July 1st, 1888:		
Stationery	$190.20	
Telephone	150.35	
Maritime Register	25.00	
Ice	11.00	
Freight on blanks	5.19	
		$381.74
July 1st, 1888, to July 1st, 1889:		
Stationery	$213.52	
Telephone	151.4	
Maritime Register	25.00	
Ice	8.14	
Freight on blanks	7.71	
Safe deposit box	10.00	
72		$415.77
July 1st, 1889, to July 1st, 1890:		
Stationery	$101.02	
Telephone	113.50	
Maritime Register	25.00	
Ice	17.20	
Freight on blanks	5.99	

July 1st, 1889, to July 1st, 1890—Continued.

Furniture	$2.00	
Office rent	276.66	
Storage rent	66.66	
Office fixtures	751.58	
Moving office	216.00	
Telegram	4.88	
Repairs	2.00	
		$1,582.49

25 July 1st, 1890, to March 1st, 1891: 73

Stationery	$126.18	
Maritime Register	25.00	
Freight on blanks	3.66	
Safe deposit vault	10.00	
Office rent	800.00	
Storage rent	200.00	
		$1,164.84
		$4,033.71

Q. Have you the vouchers and receipts of these various items contained in your last item?

A. I have.

Q. And they are here presented ready to be inspected? 74

(Counsel for petitioner offers in evidence the vouchers referred to by witness.)

Q. By whom was this amount of $4,033.71 and the expenses incurred for coal paid?

A. By me.

Q. Have you duly demanded payment thereof from the U. S.?

A. I have.

Q. What, if any, reason was given by the disbursing officers of the U. S. for the nonpayment thereof?

A. That Congress had failed to make any appropriation therefor.

Q. Have you had any correspondence with the Secretary of the Treasury, and do you know of any correspondence of the Secretary of the Treasury with the Speaker of the House of Representatives, 75 in relation to the payment of these various items of expenses incurred by you as shipping commissioner?

A. I have had such correspondence, and now produce Executive Document No. 263, House of Representatives, 51st Congress, 2nd session, which contains two of my communications to the Secretary of the Treasury on that subject, and his letters to the Speaker of the House of Representatives.

26 (Counsel for petitioner offers these various letters in evi- 76 dence, and marked Petitioner's Exhibit No. 3.)

[51st Congress, House of Representatives, 2nd session. Ex. Doc. No. 263. Expenses of the office of the United States shipping commissioner. Letter from the Acting Secretary of the Treasury recommending an appropriation
77 for the expenses of the office of the United States shipping commissioner, and transmitting a copy of a communication on the subject from the United States commissioner at New York. February 14th, 1891. Referred to the Committee on Appropriations.]

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 14, 1891.

SIR: Referring to the communication of the Secretary of the Treasury of December 8th, 1890, inviting the attention of Congress
78 to the fact that there has been no provision for the payment of the expenses of the office of the United States shipping commissioners since June 30th, 1886, and to the copy of a letter from the shipping commissioner at New York regarding the expenses of that office (accompanying said communication), I have the honor to state that, in my opinion, a necessity exists for an appropriation to cover such expenses, and I respectfully recommend that the following clause be inserted in the general deficiency bill:

Five thousand dollars, or so much thereof as may be necessary, to reimburse the shipping commissioner at New York for his
79 27 expenditures for office fixtures, books and stationery, heating apparatus and fuel, telephone service, office rent, and other expenses connected with the administration of his office, from the first day of July, 1886 (at which time the provision for the payment thereof by the Treasury Department was omitted in the act of June 19th, 1886), to the first day of July, 1891; and also the further sum of two thousand and five hundred dollars, or so much thereof as may be necessary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period. Such expenses to be audited and such reimbursements to be made under the direction of the Secretary of the Treasury.

80 Respectfully, yours,

A. B. NETTLETON,
Acting Secretary.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

NOTE.—A copy of another communication on this subject, dated Feb. 12th, 1891, from the United States shipping commissioner at New York, herewith transmitted.

OFFICE OF THE U. S. SHIPPING COMMISSIONER,
New York, February 12th, 1891.

81 SIR: I have the honor respectfully to request your further action with regard to the necessary expenses of the administration of the public business of this office. In a communication addressed to the Speaker of the House of Representatives by your immediate predecessor, dated December 8, 1890, a copy whereof (printed as Executive Document No. 71, H. R.) is herewith enclosed, he invited attention to the fact that there is no appropriation for the expenses of the office of the

United States shipping commissioner, and that while section
28 27 of the act of June 26th, 1884, authorized the Secretary of 82
the Treasury to pay the expenses of such offices, this provision was not found in section 1 of the act of June 19, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of his clerks, without reference to other expenses.

In a communication from this office, dated New York City, October 15th, 1890 (a copy of which is herewith transmitted), it was shown that from January 1st, 1890, to October 1st, 1890, I had been called upon to make, from my own private resources, for the necessary expenses of this office, disbursements amounting to $2,122.62.

Since the latter date, to wit, from October 1st, 1890, to February 83
1st, 1891, I have been called upon to make, from my own private resources, for the similar necessary expenses of this office, additional disbursements amounting to $550.81.

In a similar way, from February 1st, 1891, to July 1st, 1891, I may be called upon to make, from my private resources, for the similar necessary expenses of this office, further disbursements, amounting to not less than $712.50.

The situation at the port of New York, with respect to the necessary expenses of properly conducting the public business of the shipping commissioner, is like none other in several particulars.

In the first place, in the very necessities of the case, at the greatest 84
maritime port of the United States, the public business of the office can not be conducted with proper regard for the convenience of the people as inexpensively as other ports. For an example: Since July 1st, 1886, the shipping commissioner at the port of New York has been constrained to expend nearly seven hundred dollars for rent of telephone alone, not because his office ever had occasion to telephone to any merchant, but because all the shipping merchants have constant need to communicate with that office by that common means of intercourse.

29 In the second place, the transactions of this office, by reason 85
of its being at the greatest port of entry, are of such magnitude as to require the consumption of books of account and stationery far beyond the necessities of such offices at our other ports.

In the third place, by reason of the fact that the quarters previously occupied by this office in the United States Barge Office building were required last April at one day's notice for the use of the Commissioner of Immigration, the shipping commissioner at New York had to encounter the unusual expense of moving his office, of renting suitable quarters for his office, and the fitting of such offices for the conduct of the public business, the rental thereof costing him $125 86
per month, and the moving and the fixtures costing him $967.58, no appropriation for this unfor'seen expense being available.

In view of the fact that the provision in the act of June 26th, 1884, to pay the office expenses of the shipping commissioner was dropped (probably inadvertently) in the act of June 19th, 1886, and in consequence thereof the compensation of the shipping commissioner' (especially the compensation of the shipping commissioner at the port

of New York) have been practically more or less reduced below the
87 sums which it was intended they would receive as compensation for their services, I respectfully request further action with regard to the expenditure of this office and others.

Very respectfully,

JAMES C. REED,
U. S. Shipping Commissioner.

To the SECRETARY OF THE TREASURY,
Washington, D. C.

88 30 [House Ex. Doc. No. 71, Fifty-first Congress, second session. Letter from the Secretary of the Treasury, calling attention to the fact of there being no appropriation for the expenses of the offices of United States shipping commissioners, together with a letter from United States shipping commissioner at New York relating to the subject.]

TREASURY DEPARTMENT,
Washington, D. C., December 8, 1890.

SIR: I have the honor to invite your attention to the fact that
89 there is no appropriation for the expenses for the offices of the United States shipping commissioners. Section 27 of the act of June 26th, 1884, authorized the Secretary of the Treasury to pay expenses of shipping offices, but this provision was not followed in section 1 of the act of June 19th, 1886, abolishing fees in such offices, said section authorizing only the payment of the shipping commissioner's salary and the compensation of his clerks, without reference to other expenses. The maximum compensation allowed to any shipping commissioner under the law is $5,000, where the fees reported are sufficient for the payment of that amount and the payment by the
90 commissioner therefrom of the cost of rent, heating, and other expenses might take a large portion of the amount.

A copy of a letter, dated October 15th, 1890, from the United States shipping commissioner at New York is enclosed herewith, as showing his objections to the existing legislation upon the subject.

Respectfully, yours,

W. WINDOM, *Secretary.*

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

91 31 OFFICE UNITED STATES SHIPPING COMMISSIONER,
New York City, October 15, 1890.

SIR: I have to acknowledge the receipt of your communication (T. B. S.) of the 11th instant, in answer to mine of the 8th instant, wherein I request that suitable provision be made for the heating of this office during the coming season, in which you state that the Department is not aware of any appropriation under which the expense of such heating can be paid, and that any further statement I "may desire to make upon the subject will receive full consideration."

In support of the proposition that such expense, the cost of heat-
92 ing the office in which the shipping commissioner conducts the public business, should not be a charge upon his personal resources, I do not know that I can say anything beyond the argument offered in my communication of September 23rd, 1890, with respect to the payment of rental of such office.

In that communication I requested authority to charge in my monthly account for September, 1890, against the surplus earnings of this office (as had been the practice prior to the passage of the act of June 19th, 1886) the sum of $100, paid by me for the rent of the office of the shipping commissioner at the port of New York for that month, for the reason that said act, which abolished the collection of 93
fees, provided that the Secretary of the Treasury "shall allow and pay (the shipping commissioners), from any money in the Treasury not otherwise appropriated, said officers such compensation as each would have received prior to the passage of" said act, and for the further reason (to take that one example) that the compensation of the shipping commissioner at the port of New York for the month of September, 1890, unless he was authorized to include such disbursement as a charge in such monthly account (and was reimbursed
32 accordingly), would evidently be $100 less than the compen- 94
sation he would have received "prior to the passage" of the act of June 19th, 1886, under the practice which at that time obtained.

In answer to that communication, the Department, under date of September 27, informed me that there was no appropriation from which such an expenditure could be reimbursed.

With all due respect, I beg leave to renew my suggestion that it is not a question of appropriation. As I ventured to suggest in my communication of September 23d, "It is possible that no provision for meeting the expenses of the offices of the shipping commissioners was deemed necessary in the law (the act of June 19, 1886) to abolish their fees, because it permitted the Secretary of the Treasury to 95
reimburse them for such expenditures," in this: "It authorized and required him to pay such compensation as each would have received prior to the passage of the act of June 19th, 1886."

The statutory compensation due me for services as shipping commissioner since January 1st, 1890 (to October 1st), is $3,750.

But since that date, for the necessary expenses of that office, I have made from my own private resources the following disbursements:

Stationery	$143.70
Telephone	37.70
Maritime Register subscription	25.00 96
Freight on blanks from Department	2.24
Ice	17.20
Telegrams	4.88
Repairs to furniture	6.00
Moving from United States Barge Office	216.00
Fitting up offices, 25 Pearl street	951.58
Rent of room for seamen's effects	141.66
Rent of offices, 25 Pearl street	576.66
Total	$2,122.60

33 It is therefore evident that the compensation which I have 97
received for my services as shipping commissioner during the past nine months instead of being $3,750 has been $1,627.38.

To reduce this condition of things to an absurdity it seems only necessary to contemplate what would have been the result but for the rare good luck that enabled me to secure last April a lease of the two floors now occupied by this office at No. 25 Pearl street at a rental of $1,200 per annum. The only other suitable premises vacant and to be had at that time in the proper locality were at No. 5 State street, for which a rental of $3,000 per annum would have had to be paid.
98 Consequently, but for the mere accident that No. 25 Pearl street had been suddenly vacated (out of the renting season) I should have been constrained to lease premises for $3,000 per annum, which would have reduced the net compensation received for my services for the past nine months to the magnificent aggregate of $277.38.

To produce this illustration further, and yet not exceed the limit of possibility, if I had been compelled to pay a rental of $3,500 per annum for suitable quarters for the offices of the shipping commissioner (and, certainly, on one floor no such space as was assigned him in the United States Barge Office building, which was inadequate
99 however, could be had for less), then for the past nine months I would have received no compensation whatever, but, on the contrary, should have had to pay $97.50 from my own pocket for the honor of being shipping commissioner at the port of New York.

Of course, the existing condition of things in the matter discussed is manifestly unfair to a public official, and I have no doubt but that the Department so regards it. But I think it should not be permitted to continue longer if any way can be found to solve the situation, if for no other reason than that the United States should, for an
100 34 example, own the fixtures of this office, or the necessary heating apparatus, if I should see fit to buy six stoves with my own money for the use of the office of the United States shipping commissioner.

In view of the position of the Department upon the questions involved in this matter, it seems to me that the readiest and most conclusive determination of them might be reached by a friendly suit by the shipping commissioner against the United States, for the amount of his disbursements for the expenses of his office.

I am ready to bring such an action, but I should question the
101 official propriety of my so doing, unless some intimation that such a course on my part would not at least have the disapproval of the Secretary of the Treasury.

Yours, respectfully, JAMES C. REED,
U. S. Shipping Commissioner.

The SECRETARY OF THE TREASURY."

Q. When you were appointed shipping commissioner for the port of New York by the circuit court where was the offices of the shipping commissioner located?

A. In a large building which had been built for the purpose exclu-
102 sively—a four-story building—at No. 187 Cherry street.

Q. And did you continue to occupy these offices at No. 187 Cherry street after your appointment by the Secretary of the Treasury in 1884?

A. I did.

Q. Did you in any time while occupying these offices in Cherry street have reasonable belief that you would be obliged to remove therefrom? If yea, state why if you know, what was the reason.

A. I had been a tenant at will of the whole building at $100 a month, and some parties had applied to rent it for storage purposes at the rate of $7,000 a year. Pending that the building was
35 sold, and the new parties wanted to make the alterations immediately and notified me that I would be required very soon to 103
move.

Q. Did you have any correspondence with the Secretary of the Treasury in relation to your removal and the cost thereof?

A. I did.

Q. Have you such correspondence here present?

A. I notified the Secretary of the Treasury on the 23rd day of March, 1886, that I had been notified to vacate the building, and that there was a place at No. 180 Cherry st. that might be rented for $100 per month, and which I thought might be made suitable for the business of the shipping commissioner; and then in a letter dated March 25, 1886, the Secretary of the Treasury authorized me to take the 104
premises named at that rent, and rent to be paid from the fees collected by the office. The shipping commissioner at this port, however, is a very undesirable tenant, because at his office he engages about 15,000 seamen per annum, and pays off and discharges about 10,000 seamen per annum. This number of men, and the agents of the sailors' landlords and creditors, of course, constitutes a very great crowd. Consequently the owner of 180 Cherry street, when he learned the nature of the occupant's business, declined to let him become a tenant.

(Counsel for petitioner now offers in evidence a letter of the Secre- 105
tary of the Treasury, dated March 25th, 1886, referred to in the last answer of the witness, and it is marked Petitioner's Exhibit No. 4.)

TREASURY DEPARTMENT,
March 25, 1886.

U. S. SHIPPING COMMISSIONER,
187 *Cherry St., New York.*

SIR: Your letter of the 23rd instant is received, stating that
36 you have been notified to quit the building now occupied by 106
the U. S. shipping commissioner's office.

It appears that the premises for which you have paid a rent of $1,200.00 per annum have been let to another party at the rate of $7,000.00 per annum; and you report the most suitable building you can find in their place is No. 180 Cherry st., which can be obtained for the same rental as that you now pay.

In reply to your request for instructions, you are informed that, in accordance with the recommendation in your communication, you may take the premises last mentioned, to wit, No. 180 Cherry st., for the business of your office, at a rent not to exceed $100.00 per month, 107
payable from fees as provided for by law, if after due investigation you shall be satisfied that the amount charged is reasonable, and as low as will be accepted.

Respectfully, yours,

C. S. FAIRCHILD,
Acting Secretary.

Q. Then you did not move from 187 Cherry st., pursuant to the authority contained in Petitioner's Exhibit No. 4?

A. No, sir.

Q. When and where did you move the offices of the U. S. shipping commissioner from 187 Cherry street?

108 A. I could not find any other suitable quarters for any such rent, and finally arranged with the purchaser of 187 Cherry st. for a short time longer, and did remain there until about the 20th day of May, 1886, when by the direction of the Secretary of the Treasury I moved the office and office effects to the United States Barge Office, foot of Whitehall st., city of New York, where quarters had been fitted up by the U. S. Government at its own expense.

Q. By whom were the expenses of this removal from 187 Cherry st. to the Barge Office paid?

A. They were paid by the United States.

37 Q. How were these expenses of removal paid?

109 A. I made up a bill amounting in the aggregate to $292, and sent the same to the Secretary of the Treasury and received back a warrant in payment thereof.

Q. Have you that bill now?

A. I have.

Q. Produce it.

(Counsel for petitioner now offers in evidence bill referred to by witness, and it is marked Petitioner's Exhibit No. 5.)

[Bill.]

"OFFICE OF THE U. S. SHIPPING COMMISSIONER,
BARGE OFFICE BUILDING,

110 *New York City, June 18th*, 1886.

The United States, To James C. Reed, Dr.

To expenses of removing safes, furniture, office fixtures, effects of deceased sailors, records, documents, etc., appertaining to the office of the U. S. shipping commissioner, from No. 187 Cherry street to the U. S. Barge Office building, as follows:

Moving two safes	$40.00
Cartage, 18 loads, at $4.00.....	72.00
Carpenters' work in removing and replacing fixtures...	180.00
111 (Two hundred and ninety-two dollars.)	$292.00

Received payment,

JAMES C. REED,
U. S. Shipping Commissioner, Port of New York.

I hereby certify that the above account is correct.

JAMES C. REED,
U. S. Shipping Commissioner, Port of New York."

JUNE 18th, 1886.

38 Q. Where were the offices of the U. S. shipping commissioner located for the port of New York, between the 20th day of May, 1886, and the 10th day of April, 1890? 112

A. In the United States Barge Office building, Battery Park, New York City.

Q. By whom was this building owned, if you know?

A. By the United States.

Q. Was any charge or rent paid by you for the use thereof during the time of your occupancy?

A. No.

Q. In 1888, had it become necessary at any time to have the stoves in your office as U. S. commissioner repaired?

Q. Yes, sir.

Q. Did you report that fact to the Secretary of the Treasury? 113

A. I did.

Q. And was anything done by the Government in relation to having such repairs done?

A. They were repaired by the superintendent of repairs of the United States.

Q. Have you the letter of the Secretary of the Treasury authorizing such repairs?

A. I have.

(Petitioner's counsel now offers in evidence letter dated Washington, D. C., February 18th, 1888, and the same is marked Petitioner's Exhibit No. 6.)

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, D. C., February 18th, 1888. 114

MR. HANS S. BEATTIE,
Custodian Barge Office, New York, N. Y.

SIR: You are advised that Mr. Wm. J. Fryer, jr., superintendent of repairs, has this day been authorized to incur an expenditure not exceeding forty dollars ($40.00), for repairing stoves in the office of the U. S. shipping commissioner, in the building in your custody.

Mr. Fryer will submit, through you, vouchers in duplicate
39 for his expense, made payable from the appropriations for 115
repairs to heating apparatus for public buildings, 1888.

Respectfully, yours,

(Signed) I. S. MAYNARD,
Assistant Secretary.
L. FRERET.

Q. Then I understand that prior to the 1st day of July, 1886, that the salaries of your clerical assistants and deputies, fixtures, repairs, the general facilities for the proper discharge of the duties of your office as commissioner, were paid by the Government of the U. S.?

A. They were. 116

Q. Then it was not until July 1st, 1886, when the act of June 19th, 1886, went into effect, that there was a change made in this regard? Was the fuel also furnished you by the Government while you occupied the rooms at the Barge Office?

A. Yes, sir; and the Government also provided a man to keep the fires going all night who was not on my pay roll, but was on the pay roll of some other office of the United States, probably the surveyor of the port, as he was the custodian of the building.

Q. State in detail why stationery, ice, telephone, and subscriptions
117 to the newspaper called the Maritime Register, and the use of the safe deposit vault, books of account, blanks, were necessary and incident to the proper discharge of the duties of shipping commissioner, and why you were obliged to pay freight on official books and blanks furnished by the Government?

A. The stationery—meaning letter paper and envelopes—was necessary because the correspondence of the office is quite large—inquiries in regard to the sailing of seamen, missing seamen—with the Treasury Department itself, with the other shipping commissioners at the other ports, and consular officers all over the world. The use of the
118 40 newspaper called the Maritime Register is required because it contains in each number the whereabouts of all vessels in the merchant service about which inquiry is made constantly. It is quite an expensive publication, being a weekly issue at 50 cts. a copy. I believe the Treasury Department finds it necessary to subscribe for five copies, and the U. S. district court at this port also takes one or more copies. The use of the safe deposit vault was made necessary by the fact that the safe at the shipping commissioner's office was not considered burglar proof, and, therefore, unsafe as a depository for any money left over at night in the hands of the cashier, too late to be
119 deposited in the bank. The use of ice was, of course, necessary for the use of clerks and others during the summer time. The official books, ledgers, cashbooks, etc., and certain other blanks which might be dispensed with at a port where the business was not so great (and were, therefore, not furnished by the Government), was necessary because of the enormous volume of business done at this office. The payment of sailors' wages alone amounted to over $500,000 per annum, and does now, and the multitude of ledger accounts which have to be opened with each vessel, until the whole crew have been paid off, including stragglers, and the number of such separate vessels' accounts
120 numbering 600 or 700 yearly. It was necessary to pay the freight on official books and blanks from Washington, because the Government made a practice of sending them by the Pennsylvania Railroad and failing to prepay them.

Q. The expense incident to procuring the items referred to in your last answer, by whom has that been paid?

A. By myself.

Q. Out of your own funds?

A. Yes.

Q. Referring to these forms and blanks which you were obliged to procure for the discharge of your duties as shipping commissioner, and which have not been paid for by the United States, state
121 41 whether you have samples thereof?

A. I have a book containing the specimens of all the blank forms which, from time to time, was necessary to be printed. Some of them, however, are not now in use. Some of them are now printed by the Government.

(Counsel for the petitioner produces a book in which are pasted the various forms, printed envelopes, etc., referred to by the witness in his last answer. The same is offered in evidence and marked Exhibit No. 7.)

Q. How long did the office of the shipping commissioner remain at the U. S. Barge Office building? 122

A. Until April 10th, 1890.

Q. By whose direction did you remove from such barge office?

A. By the direction of the Secretary of the Treasury and the custodian of the U. S. buildings in the city of New York.

Q. Did you procure other quarters for the discharge of your duties as U. S. shipping commissioner, and, if so, where, and by whose direction?

A. By the direction of the Secretary of the Treasury, at No. 25 Pearl street.

Q. Have you the letters or telegrams of the Secretary of the Treasury and your telegram in reply thereto, and the letter of Joel B. Erhardt, custodian? 123

A. I have.

(Counsel for petitioner now offers in evidence telegram of George S. Batcheller, dated April 3rd, 1890, marked Exhibit 8.

[Telegram.]

WASHINGTON, D. C., *April 3rd*, 1890.

To J. C. REED,
Shipping Commissioner, Barge Office, New York.

Custodian directed to notify you to vacate your quarters on or before the 5th instant. Please comply with this request.

GEORGE S. BATCHELLER,
Acting Secretary.

42 Also letter of Joel B. Erhardt, custodian, dated April 4th, 1890, marked Exhibit 9. 124

U. S. BARGE OFFICE BUILDING,
OFFICE OF CUSTODIAN,
New York, April 4th, 1890.

JAMES C. REED, Esq.,
U. S. Shipping Commissioner.

SIR: I am directed by the Department to inform you that the space in this building now occupied by you must be vacated on or before the 5th instant, it having been allotted to the use of the commissioner of immigration. 125

Respectfully, yours,

JOEL B. ERHARDT,
Custodian.

Also telegram of James C. Reed, U. S. shipping commissioner at the port of New York, to the Secretary of the Treasury, dated April 4th, 1890, which is marked Exhibit No. 10.

[Telegram.]

APRIL 4TH, 1890.

To the SECRETARY OF THE TREASURY,

126 *Washington.*

Telegram received regarding vacating Barge Office annex to-morrow. The requirement of instant possession necessarily restricts choice of new quarters for Shipping Commissioner's office to premises now unoccupied and to places not the most suitable.

The area of the present office is about three thousand square feet, which, at times, has proved somewhat inadequate and overcrowded. No area of like dimensions on one floor is obtainable at this junction in the commercial part of this city.

127 43 I am offered the third and fourth floors of the building No 25 Pearl street for twelve hundred dollars per annum, with immediate possession and option to renew for two or three years.

These quarters, especially because of their being up-stairs, are not altogether suitable, but there are none better adapted now vacant, and they can be made to serve the purpose sufficiently well. I believe I have inspected every vacant room south of Fulton street, and can say that no other premises approximately suitable are now obtainable.

During the past three days we have shipped at this office ninety-eight seamen and paid off two hundred and seventy-four, which trans-
128 actions, when the congregating of sailor landlords, slop dealers, and others is included, has given us a daily attendance of about two hundred persons. This makes the shipping commissioner, to those who know the character of his business, an undesirable tenant; and I, therefore, recommend that authority be telegraphed me to-day to execute a lease of the premises mentioned.

The additional conditions are that the tenant may make such interior improvements, alterations, sub-divisions, as he pleases, including water closets and inside stairs, but shall restore the premises to their present condition, if required by the owner, upon vacating.

129 The premises mentioned will not accommodate the effects of deceased seamen, of which there are now in my custody some six hundred pieces of baggage; but it may be assumed that a suitable store room, conveniently adjacent, may be rented for about four or five hundred dollars. If an enclosed space, about forty feet square, could be had in the basement of the Army Building, which is directly opposite, this expenditure could be avoided.

It is not probable that any premises can be leased for less than one year.

130 44 Assuming that authority is telegraphed me to sign lease, please inform me by what method the removal of the safes, desks, records, sailor's effects, etc., shall be arranged for.

The commissioner of immigration informs me that he would prefer not to have removed the stoves, the sub-dividing partitions, the railings and some of the fixed desks, none of which, however, are well adapted to the changed conditions of the new premises.

Please instruct me similarly concerning the partitions, fittings, etc., of the new office.

If this telegram can be answered immediately, the shipping commissioner's office will be removed to-morrow. 131

JAMES C. REED,
Commissioner.

Also telegram of Mr. Windom, Secretary of the Treasury, dated April 5th, 1890, marked Exhibit No. 11.)

[Telegram.]

WASHINGTON, D. C., *April* 5th, 1890.

U. S. SHIPPING COMMISSIONER,
New York.

Barge Office will probably be occupied for emigration purposes tem- 132
porarily only. The Pearl street quarters may be secured as suggested in your telegram of yesterday, and, if practicable, arrangements may be made for storing seamen's baggage in basement Army Building opposite. All expenses, removal, rent, alterations, repairs, etc., must be borne by you, no appropriation by Congress being available, so far as Department can ascertain.

W. WINDOM,
Secretary.

45 Q. Pursuant to these directions and instructions contained in these letters and telegrams, what did you do? 133

A. I sought after other quarters for the office of the shipping commissioner.

Q. And what did you find?

A. The leases in New York usually begin on the 1st of May, and at this time of year there were few suitable places vacant, and those only because the tenants had suddenly vacated the premises. There were only at this time, in April, 1890, two suitable places in the down-town locality, where the shipping commissioner's office must be located. One of them was at No. 40 Broad street, and the floor space there was less than that occupied at the Barge Office building, but all on one floor, the rent of which was $3,000 per annum, and the other was at No. 134
25 Pearl street, on the second and third floors, of still smaller dimensions and in very bad order, much out of repair, and would necessarily involve a great deal of expense to properly arrange for the shipping commissioner's business, the rent of which was $1,200 per year. The fact that the rent of the first-named place was so much in excess of the rent that had been paid for the Cherry Street building necessarily limited me to the renting of the premises at No. 25 Pearl street; at this I rented pursuant to the directions of the Secretary of the Treasury, as is shown by his telegram heretofore put in evidence. His suggestion that storage room for the effects of deceased 135
seamen might be found in the U. S. Army building, opposite No. 25 Pearl street, was found to be impracticable, because the whole of that building was necessarily used by the quartermaster's and engineer's department of the Army, and I was, therefore, obliged to find other quarters for the storage of deceased seamen's effects, and for that pur-

pose rented the nearest inexpensive place that I could find, namely, the basement at No. 19 Pearl street, at $300 per annum.

Q. Did you report to the Secretary of the Treasury that
136 46 you had leased these premises at No. 19 Pearl street and No 25 Pearl street?

A. I did.

Q. And has your office remained in the building at No. 25 Pearl street?

A. It has and is there now, although the complaints of the other tenants about the great crowds that the office brings is constant, and it is more than probable that the shipping commissioner will not be allowed to remain there after the 1st of May next. In fact, the landlord has intimated as much to me already, which would involve the fitting up of other offices and the renting of premises at a much higher rate of rental, because it has become known that the shipping commissioner is a very undesirable tenant.

137 Q. Are the premises at No. 25 Pearl street and No. 19 Pearl street any larger than the necessities of your office require?

A. No, sir; they are too small, much too small, especially as the documents to be filed increase so rapidly.

Q. Have you continued to pay the rental of 25 Pearl street since the 10th day of April, 1890, down to the 1st day of March, 1891?

A. I have.

Q. And that rental is $1,200 a year.

A. It is.

Q. What rental do you pay for the premises at No. 19 Pearl street?

A. $300 per annum.

Q. And did you pay that rental from the 10th day of April, 1890, to March, 1891?

A. I did.

Q. At what rate?

A. $300 per annum.

138 Q. Making your total payments for rent $1,500 per annum for premises actually necessary and incident to the discharge of your duties under the statute as U. S. shipping commissioner at this port?

A. Yes, sir.

Q. State why it is that you are charged with the cost of deceased seamen's effects?

A. The statute of 1872 requires the circuit court to take charge of deceased seamen's effects, and when I assumed the duties of shipping commissioner the circuit court refused to receive such effects, and compelled me to retain the charge thereof, and I have done so ever since.

139 47 Q. Have you any documents in your possession, showing the supervision of the circuit court over these deceased seamen's effects?

A. I have.

(The petitioner's counsel offers in evidence two letters and a blank receipt, letters of April 24, 1890, signed by John A. Shields, clerk of the circuit court, which are marked Exhibit No. 12.)

[Clerk's office, United States circuit court, U. S. court-house & P. O. building, room 82, third floor. P. O. box 419. John A. Shields, clerk.] 140

NEW YORK CITY, *April* 24, 1890.

SIR: In the matter of Anton Gulbrand, a deceased seaman, late of the brig "Britannia," an order was entered April 23rd, 1890, for payment of wages and delivery of effects to Julius Gilbertsen, attorney for Andrine Gulbrand (mother), 76 Charlton street, city.

Very respectfully,

JOHN A. SHIELDS, *Clerk.* 141

Hon. JAMES C. REED,
U. S. Shipping Commissioner, New York City.

48 [Clerk's office, United States circuit court, U. S. court-house & P. O. building, room 82, third floor. P. O. box 419. John A. Shields, clerk.] 142

In the matter of Anton Gulbrand, a deceased seaman, late of the "Britannia."

NEW YORK, *April 24th*, 1890.

SIR: Enclosed herewith, you will find a check to your order on the Central National Bank, in the city of New York, for the sum of eight 91/100 dollars ($8.91/100), said amount being the balance of 143
wages due above-named deceased seaman, and paid you, by order of court as attorney for mother and next of kin.

Please sign and return the enclosed receipt.

If the deceased left any effects (clothing, etc.), application should be made to U. S. shipping commissioner, who may be addressed at 25 Pearl street, New York City.

Very respectfully,

JOHN A. SHIELDS, *Clerk.*

To Mr. JULIUS GILBERTSEN,
76 Charlton St., City. 144

49 Trunks.
One bag.
Boxes.
Bundles.
Chests.
Pictures.
Charts.
Boots.
Quadrants.
Books.
Watches.
Letters.
Trinkets.

OFFICE OF THE 145
UNITED STATES SHIPPING COMMISSIONER,
New York City, April 26, 1890.

Received of James C. Reed, United States shipping commissioner at the port of New York, one piece, as per margin, being the effects of Anton Gulbrand, deceased seaman, late of the brig "Britannia," delivered by order of the United States circuit court, entered April 24, 1890.

JULIUS GILBERTSEN. 146

No.

Q. Has any of the rental paid by you for the premises at No. 25 Pearl street and No. 19 Pearl street, in the city of New York, necessarily used for the discharge of the duties imposed upon you as shipping commissioner for the port of New York, been paid by the U. S., or any officer thereof?

A. No; I have been obliged to pay such rental out of my own pocket. Demand has been made by me upon the Secretary of the

147 Treasury and payment thereof refused, upon the ground that Congress had failed to make any appropriation therefor.

Q. Have you a letter addressed to the Secretary of the Treasury, in relation to the payment of this rental and his answer thereto?

A. I have.

148 50 (Counsel for petitioner offers in evidence letter of September 23rd, and the same is marked Petitioner's Exhibit No. 13.)

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
No. 25 Pearl Street, New York City, Sept. 23rd, 1890.

The SECRETARY OF THE TREASURY,
Washington.

SIR: The first section of the act of Congress approved June 19th, 1886, which took effect July 1st, 1886, and abolished the collection of fees by the shipping commissioners for services rendered in
149 shipping or discharging seamen for our merchant vessels, provided that "the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for such services as each would have received prior to the passage of this act."

Prior to the passage of said act, viz, from July 1st, 1884, until July 1st, 1886, the first item charged against the fee earnings of this office in each monthly account prescribed by the Treasury Department was the sum of one hundred dollars for the monthly rental of the premises wherein the public business of the shipping commissioner was conducted.

150 In May, 1886, the office of the shipping commissioner was removed from the premises which it then occupied, at No. 187 Cherry street (by reason of the expiration of the lease and the sale of the building to the city for a public school), to the annex of the U. S. Barge Office building.

In April, 1890, the office of the shipping commissioner was removed from those premises (by reason of their being needed by the Treasury Department for the landing of immigrants) to the quarters which it now occupies at No. 25 Pearl street.

151 51 Since the date of its last removal, since it has again occupied a private building, and since it has resumed the paying of a monthly rental of one hundred dollars therefor, the item of rent so paid has not been stated in the monthly accounts as a charge against the nominal earnings of the office of the shipping commissioner (although said earnings since that date have exceeded the expenses by some twenty-seven hundred dollars), because it had been stated that no appropriation had been made to meet such expenditure.

I beg leave to suggest that it is possible that no provision for meeting the expenses of the offices of the shipping commissioner was
152 deemed necessary in the law which abolished their fees, because it permitted the Secretary of the Treasury to reimburse them for such expenditures.

The monthly compensation of the shipping commissioner at New York, prior to the passage of the act of June 19th, 1886, was one hun-

dred dollars larger than it has been since the 10th of April, 1890, because, since that date, he has paid that sum each month as rent of the offices of the shipping commissioner, and has not charged it against the monthly earnings of that office, as he was allowed to do prior to the passage of said act.

In other words, the monthly compensation he would have received prior to the passage of the act of June 19th, 1886, is one hundred 153
dollars more than he now receives.

The act of June 19th, 1886 (as already quoted), prescribed that the Secretary of the Treasury shall allow and pay said officers such compensation as each would have received prior to the passage of said act.

I have, therefore, respectfully to request that the practice which obtained prior to the passage of the act of June 19th, 1886 (viz, from July 1st, 1884, to July 1st, 1886), when said act became operative, be resumed, and that an authorization be given me to
52 charge in the next monthly account of this office, as the first 154
item, the sum of one hundred dollars, disbursed in payment of the rent of the office of the shipping commissioner for the month of September, 1890.

Respectfully, yours, JAMES C. REED,
United States Shipping Commissioner.

(Also letter from the Treasury Department, dated Sept. 27th, 1890, to the U. S. shipping commissioner, marked Petitioner's Exhibit, No. 14.)

TREASURY DEPARTMENT, 155
Washington, D. C., Sept. 27, 1890.

U. S. SHIPPING COMMISSIONER,
New York, N. Y.:

SIR: This Department is in receipt of your letter, dated the 23rd instant, requesting permission to charge in your accounts the sum of one hundred dollars ($100.00) disbursed each month by you in payment of the rent of your office.

You are informed that, so far as this Department is aware, there is no appropriation from which the expense could be allowed. It has been uniformly held heretofore by the Department that no amount 156
could be paid to shipping commissioners for services in excess of the sum specified in chapter 6, Title LIII, of the Revised Statutes.

Respectfully, yours,

O. L. SPAULDING,
Assistant Secretary.

Q. Did you have any correspondence with the Secretary of the Treasury in relation to the heating of your office at No. 25 Pearl street?

A. Yes, sir; and I now produce letter sent to the Secretary of the Treasury and his answer thereto.

53 (Petitioner's counsel offers in evidence letter of James C. 157
Reed to the Secretary of the Treasury, of October 8th, 1890, marked Petitioner's Exhibit No. 15.)

147 Treasury and payment thereof refused, upon the ground that Congress had failed to make any appropriation therefor.

Q. Have you a letter addressed to the Secretary of the Treasury, in relation to the payment of this rental and his answer thereto?

A. I have.

148 50 (Counsel for petitioner offers in evidence letter of September 23rd, and the same is marked Petitioner's Exhibit No. 13.)

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
No. 25 Pearl Street, New York City, Sept. 23rd, 1890.

The SECRETARY OF THE TREASURY,
Washington.

SIR: The first section of the act of Congress approved June 19th, 1886, which took effect July 1st, 1886, and abolished the collection of fees by the shipping commissioners for services rendered in
149 shipping or discharging seamen for our merchant vessels, provided that "the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for such services as each would have received prior to the passage of this act."

Prior to the passage of said act, viz, from July 1st, 1884, until July 1st, 1886, the first item charged against the fee earnings of this office in each monthly account prescribed by the Treasury Department was the sum of one hundred dollars for the monthly rental of the premises wherein the public business of the shipping commissioner was conducted.

150 In May, 1886, the office of the shipping commissioner was removed from the premises which it then occupied, at No. 187 Cherry street (by reason of the expiration of the lease and the sale of the building to the city for a public school), to the annex of the U. S. Barge Office building.

In April, 1890, the office of the shipping commissioner was removed from those premises (by reason of their being needed by the Treasury Department for the landing of immigrants) to the quarters which it now occupies at No. 25 Pearl street.

151 51 Since the date of its last removal, since it has again occupied a private building, and since it has resumed the paying of a monthly rental of one hundred dollars therefor, the item of rent so paid has not been stated in the monthly accounts as a charge against the nominal earnings of the office of the shipping commissioner (although said earnings since that date have exceeded the expenses by some twenty-seven hundred dollars), because it had been stated that no appropriation had been made to meet such expenditure.

I beg leave to suggest that it is possible that no provision for meeting the expenses of the offices of the shipping commissioner was
152 deemed necessary in the law which abolished their fees, because it permitted the Secretary of the Treasury to reimburse them for such expenditures.

The monthly compensation of the shipping commissioner at New York, prior to the passage of the act of June 19th, 1886, was one hun-

dred dollars larger than it has been since the 10th of April, 1890, because, since that date, he has paid that sum each month as rent of the offices of the shipping commissioner, and has not charged it against the monthly earnings of that office, as he was allowed to do prior to the passage of said act.

In other words, the monthly compensation he would have received prior to the passage of the act of June 19th, 1886, is one hundred 153
dollars more than he now receives.

The act of June 19th, 1886 (as already quoted), prescribed that the Secretary of the Treasury shall allow and pay said officers such compensation as each would have received prior to the passage of said act.

I have, therefore, respectfully to request that the practice which obtained prior to the passage of the act of June 19th, 1886 (viz, from July 1st, 1884, to July 1st, 1886), when said act became operative, be resumed, and that an authorization be given me to
52 charge in the next monthly account of this office, as the first 154
item, the sum of one hundred dollars, disbursed in payment of the rent of the office of the shipping commissioner for the month of September, 1890.

Respectfully, yours, JAMES C. REED,
United States Shipping Commissioner.

(Also letter from the Treasury Department, dated Sept. 27th, 1890, to the U. S. shipping commissioner, marked Petitioner's Exhibit, No. 14.)

TREASURY DEPARTMENT, 155
Washington, D. C., Sept. 27, 1890.

U. S. SHIPPING COMMISSIONER,
New York, N. Y.:

SIR: This Department is in receipt of your letter, dated the 23rd instant, requesting permission to charge in your accounts the sum of one hundred dollars ($100.00) disbursed each month by you in payment of the rent of your office.

You are informed that, so far as this Department is aware, there is no appropriation from which the expense could be allowed. It has been uniformly held heretofore by the Department that no amount 156
could be paid to shipping commissioners for services in excess of the sum specified in chapter 6, Title LIII, of the Revised Statutes.

Respectfully, yours,

O. L. SPAULDING,
Assistant Secretary.

Q. Did you have any correspondence with the Secretary of the Treasury in relation to the heating of your office at No. 25 Pearl street?

A. Yes, sir; and I now produce letter sent to the Secretary of the Treasury and his answer thereto.

53 (Petitioner's counsel offers in evidence letter of James C. 157
Reed to the Secretary of the Treasury, of October 8th, 1890, marked Petitioner's Exhibit No. 15.)

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
No. 25 Pearl Street, New York City, October 8th, 1890.

The SECRETARY OF THE TREASURY,
Washington.

SIR: I have the honor to request that suitable provision be made
158 for the heating of this office at an early day.

As its present location is less exposed than were the quarters which it occupied last winter, a smaller number of stoves and a lesser quantity of fuel will be required. Six stoves and twenty tons of coal will probably be adequate for the purpose.

Yours, respectfully,

JAMES C. REED,
United States Shipping Commissioner.

159 (Also letter from the Treasury Department, dated October 11th, 1890, which is offered in evidence and marked Petitioner's Exhibit No. 16.)

TREASURY DEPARTMENT,
Washington, D. C., October 11, 1890.

U. S. SHIPPING COMMISSIONER,
New York.

SIR: Referring to your letter of the 8th instant, this Department has to state that it is not aware of any appropriation under which the expense of heating you mention can be paid.

160 54 Any further statement you may desire to make upon the subject will receive full consideration.

Respectfully, yours,

O. L. SPAULDING,
Assistant Secretary.

(Also letter of October 15th, 1890, from the U. S. shipping commissioner to the Secretary of the Treasury, and offered in evidence and marked Petitioner's Exhibit No. 17.)

OFFICE OF THE
UNITED STATES SHIPPING COMMISSIONER,
161 *New York City, October 15th*, 1890.

The SECRETARY OF THE TREASURY,
Washington.

SIR: I have to acknowledge the receipt of your communication (T. B. S.) of the eleventh instant, in answer to mine of the eighth instant, wherein I had requested that suitable provision be made for the heating of this office during the coming season, in which you state that the Department is not aware of any appropriation under which the expense of such heating can be paid, and that any further statement I "may desire to make upon the subject will receive full consideration."

162 In support of the proposition that such expenses, the cost of heating the office in which the shipping commissioner conducts the public business, should not be a charge upon the personal resources, I do not know that I can say anything beyond the argument offered in my

communication of September 23d, 1890, with respect to the payment of the rental of such office.

In that communication I requested authority to charge in my my monthly account for September, 1890, against the surplus earnings of this office (as had been the practice prior to the passage
55 of the act of June 19th, 1886), the sum of one hundred dol- 163
lars, paid by me for the rent of the office of the shipping commissioner at the port of New York, for that month, for the reason that said act, which abolished the collecting of fees, provided that "the Secretary of the Treasury shall allow and pay (to shipping commissioners), from any money in the Treasury not otherwise appropriated, said officers such compensation as each would have received prior to the passage of said act," and for the further reason (to take that one example) that the compensation of the shipping commissioner at the port of New York, for the month of September, 1890, unless he was authorized to include such disbursements as a charge in such monthly account (and was reimbursed accordingly), would evidently 164
be one hundred dollars less than the compensation he "would have received prior to the passage" of the act of June 19th, 1886, under the practice which at that time obtained.

In answer to that communication the Department, under the date of September 27th, informed me that there was no appropriation from which such an expenditure could be reimbursed.

With all due respect, I beg leave to renew my suggestion that it is not a question of appropriations. As I ventured to suggest in my communication of September 23, "It is possible that no provision for meeting the expenses of the offices of the shipping commissioners 165
was deemed necessary in the law (the act of June 19, 1886), which abolished their fees, because it permitted the Secretary of the Treasury to reimburse them for such expenditures," in this: It authorized and required him to pay them such compensation as each would have received prior to the passage of the act of June 19th, 1886.

The statutory compensation due me for services as shipping commissioner since January 1, 1890 (to October 1), is $3,750.

But since that date (to October 1st), for the necessary expenses
56 of that office, I have made from my own private resources 166
the following disbursements:

Stationery	$143.70
Telephone	37.50
Maritime Register subscription	25.00
Freight on blanks from Department	2.24
Ice	17.20
Telegrams	4.88
Repairs to furniture	6.00
Moving from U. S. Barge Office	216.00
Fitting up offices, 25 Pearl street	751.58 167
Rent of room for seamen's effects	141.66
Rent of offices, 25 Pearl street	576.66
Total	$1,922.62

It is therefore evident that the compensation which I have received for my services as shipping commissioner during the past nine months instead of being $3,750 has been $1,827.38.

To reduce this condition of things to an absurdity, it seems only necessary to contemplate what would have been the result but for the
168 rare good luck that enabled me to secure, last April, a lease of the two floors now occupied by this office at No. 25 Pearl street, at a rental of $1,200 per annum.

The only other suitable premises vacant and to be had at that time, in the proper locality, were at No. 5 State street, for which a rental of $3,000 per annum would have had to be paid.

Consequently, but for the mere accident that No. 25 Pearl street had been suddenly vacated (out of the renting season), I should have been constrained to have leased the premises at $3,000 per
57 annum which would have reduced the net compensation for
169 my services for the past nine months to the magnificent aggregate of $177.38.

To produce this illustration further, and yet not to exceed the limit of possibility, if I had been compelled to pay a rental of $4,000 per annum for suitable quarters for the office of the shipping commissioner (and certainly, on one floor no such space as was assigned him in the U. S. Barge Office building, which was inadequate, however, could be had for less), then for the past nine months I would have received no compensation whatever for my services, but, on the contrary, should have had to pay $272.62 from my own pocket for the
170 honor of being shipping commissioner at the port of New York.

Of course, the existing condition of things in the matter discussed is manifestly unfair to a public official, and I have no doubt but what the Department so regards it.

But I think it should not be permitted to continue longer, if any way can be found to solve the situation, if for no other reason than that the United States should, for an example, own the fixtures of this office, or the necessary heating apparatus, if I should see fit to buy six stoves with my own money for the use of the office of the U. S. shipping commissioner.

In view of the position of the Department upon the questions
171 involved in this matter, it seems to me that the readiest and most conclusive determination of them might be reached by a friendly suit by the shipping commissioner against the United States for the amount of his disbursements for the expenses of his office.

I am ready to bring such an action, but I should question the official propriety of my so doing without some intimation that such a course on my part would not, at least, have the disapproval of the Secretary of the Treasury.

Yours, respectfully, JAMES C. REED,
United States Shipping Commissioner.

172 58 (Also letter from the Treasury Department, dated October 18th, 1890, to the U. S. shipping commissioner, and marked Petitioner's Exhibit No. 18.)

TREASURY DEPARTMENT,
Washington, D. C., October 18th, 1890.

U. S. SHIPPING COMMISSIONER,
New York, N. Y.

SIR: Referring to your letter of the 15th instant, this Department has to state that it is still of the opinion that there is no authority of law for the payment by the United States of the expenses of heating, 173
&c., in your office.

Concerning your suggestion that the readiest determination of the question you raise might be reached by a friendly suit brought by you against the United States for the amount of your disbursements, the Department has to state that the matter is left to your discretion, and that it will interpose no obstacle to such a suit. An effort was made to have the law amended so as to include necessary expenses such as you mention, but without avail. It is probable that it may be considered expedient and proper to renew the recommendation formerly made in regard to the matter.

Respectfully, yours. W. WINDOM, 174
Secretary of the Treasury.

S.

Q. At the time when you were compelled, by the Secretary of the Treasury and the custodian, Joel B. Erhardt, to move your office from the U. S. Barge Office building to No. 25 Pearl street, what, if any, provision was made by the Government for the expenses incident to such removal?

A. None whatever. I was obliged to pay the expenses out of my own pocket.

59 Q. Were the rooms at No. 25 Pearl street which were 175
occupied by you furnished with the necessary desks and office furniture?

A. No; they were unfurnished, and for the proper discharge of the business of the office it became necessary to furnish the same, and also to subdivide them to put in shelves, and to construct a room apart for the storage of the files and documents of the office, and this was made necessary and more expensive by reason of the fact that the immigration commissioner, who was to take possession of the rooms vacated by him in the Barge Office building, and required me to leave the partitions and some other fixtures. The commissioner of immigration also required me to leave the stoves. I moved a portion of 176
the furniture theretofore in use by me as shipping commissioner at the Barge Office to the rooms at No. 25 Pearl street, and the cost of office fixtures made necessary by this forced removal paid by me amounted to the sum of $751.58. The expenses of this removal amounted to the sum of $216.00, no part of which has been paid to me by the Government of the U. S., although demand therefor has been duly made. The only reason assigned for such refusal is that Congress had failed to make any appropriation.

Q. Have you in your possession a copy of the House of Representatives bill No. 13658, known as the general deficiency bill of 1891?

A. Yes, I have. 177

(Counsel for petitioner now offers so much of that bill as shows the amendment made by the U. S. Senate, found on page 17, referring to the expenses of offices of shipping commissioners, which reads as follows: "To reimburse the shipping commissioner at New York for his expenditures for office fixtures, books, and stationery, heating apparatus, and fuel, telephone service, office rent, and other expenses connected with the administration of his office from the first
178 60 day of July, eighteen hundred and eighty-six (at which time the provision of the payment thereof by the Treasury Department was omitted in the act of June 19th, 1886), to the 1st day of July, eighteen hundred and ninety-one, five thousand dollars; and also the further sum of two thousand five hundred dollars, or so much thereof as may be necessary, for similar expenses that may have been or may be incurred by shipping commissioners at other ports during said period, such expenditures to be audited and such reimbursements to be made under the direction of the Secretary of the Treasury; in all, seven thousand five hundred dollars.")

179 Q. Can you state why so large a sum as $5,000 was recommended by the Senate for the reimbursement of the shipping commissioner of New York, when only $2,500 was recommended for the reimbursement of all the other shipping commissioners in the United States?

A. Yes; because the magnitude of the business at the port of New York, as compared with the business of all the other ports, excepting San Francisco, is so large. I have only at hand the statistics of the year 1888, and take the shipments of seamen for an example: Out of the total of 44,705 seamen engaged during the fiscal year ending June 30th, 1888, 14,191 of them were shipped at New York and
180 23,414 of them shipped at eighteen other ports where there are shipping commissioners, and 7,110 were shipped at San Francisco. The shipping commissioner at San Francisco occupies quarters in the appraiser's building of the United States, and consequently is furnished with offices, fuel, lights, etc., at the cost of the United States.

Q. During your occupancy of the premises at No. 25 Pearl street prior to March 1st, 1891, did it become necessary to incur any expenses for repairs?

A. Yes.

Q. Were such repairs, when necessary, paid for by you out of your own pocket?

A. They were.

61 Q. Has the sum been repaid to you by the Government of
181 the U. S.?

A. It has not.

Q. I understand that you have already stated, in your evidence, that the aggregate amount of expenses incurred by you for the necessary and proper discharge of the duties of your office as shipping commissioner, between the 1st day of July, 1886, and the 1st day of March, 1891, to be $4,033.71; was all of that sum expended by you in behalf of the Government of the United States, in discharge of the duties imposed upon you as shipping commissioner?

A. It was.

Q. And were such charges and disbursements reasonable charges, and made necessary by the Secretary of the Treasury and the statutes of the United States, and the regulations of the circuit court? 182

A. They were reasonable and fair charges, and were made necessary by the direction of the Secretary of the Treasury, the statutes of the United States, and the regulations of the circuit court.

Q. Have you any data in your possession which will enable you to show what, if any, increase in the business of the office has occurred since your predecessor was removed?

A. Yes, I have.

Q. State what was the total number of crews engaged by your predecessor during the years of 1881, 1882, and 1883.

A. 1,966.

Q. State the total number of crews engaged by you as U. S. ship- 183
ping commissioner during the the years 1887, 1888, and 1889.

A. 6,092.

Q. What is the cause of this increase, and is it still maintained?

A. Yes, it is still maintained. The reason of it is that *by* the act of 1886 abolished the fees for shipping and discharging crews, thereby bringing to this office a large number of American vessels, which were not required by law to go before the commissioner for the purpose of engaging their crew.

Q. Have you any letter or authority from the Secretary of
62 the Treasury to purchase blank forms needed until the same 184
are supplied by the Department?

A. Yes, I have.

Q. Produce the same.

(Petitioner's counsel offers in evidence letter of the Secretary of the Treasury to petitioner, dated Sept. 13th, 1884, marked Petitoner's Exhibit, No. 19.)

TREASURY DEPARTMENT,
Washington. D. C., Sept. 13, 1884.

J. C. REED, Esq.,
U. S. Shipping Commissioner, 187 *Cherry Street, New York.* 185

SIR: This office is in receipt of your telegram of the 12th, instant, stating that you will not be able to clear vessels next week unless supplied by Monday with blank forms, particularly crew lists, certificates, and articles.

The following telegram, signed by myself, was sent you in regard to the matter:

"Commissioners at Boston and Philadelphia directed by telegraph to forward you surplus articles, certificates, and crew lists."

If found necessary, you may procure, by purchase, such blanks as may be required for use before they can be supplied by the Depart- 186
ment, and include the costs in your next estimate, to be paid from the general fund, "Salaries and expenses shipping service (expenditures)," referring to this letter by date as your authority for so doing.

Many forms are in the hands of the Public Printer, but there is some unavoidable delay in printing them. For instance, a form for

articles was sent to the printer August 21, but this office has not yet been able to get a proof thereof.

All the work has been made special.

Very respectfully,

T. B. SANDERS,
Deputy Commissioner.

187 63 Q. Have you any letter from the Treasury Department, authorizing the cost of telegrams?

A. I have.

(Counsel for petitioner offers in evidence letter from the Treasury Department, dated Sept. 15, 1884, which is marked Petitioner's Exhibit No. 20.)

TREASURY DEPARTMENT,
Washington, September 15, 1884.

J. C. REED, Esq.,
U. S. Shipping Commissioner, 187 *Cherry Street, New York.*

188 SIR: This Department is in receipt of your letter, dated the 1st ultimo, relating to the payment of the cost of a certain telegram, which you were authorized to include in the disbursement account of your office.

In view of the facts, you may forward the bill for payment from the general fund.

Very respectfully,

T. B. SANDERS,
Deputy Commissioner.

Q. Have you any authority from the Secretary of the Treasury, authorizing the incurring of expenses of printing the blanks; if so,
189 produce the same?

(Counsel for petitioner offers in evidence letter from Treasury Department, November 29th, 1884, addressed to petitioner, which is marked Exhibit No. 21.)

TREASURY DEPARTMENT,
Washington, D. C., November 29th, 1884.

U. S. SHIPPING COMMISSIONER,
New York.

SIR: I return herewith vouchers forwarded with your letter of the 26th instant.

190 64 This office is informed by the accounting officers that receipts in the present form will necessitate the statement of a separate account for each person, and the preparation of draft accordingly.

It is the usual practice to have such vouchers acknowledge the receipt of the amount in each instance from the shipping commissioner, so as to have but one account and one remittance.

Your account for October is also returned. It included an item of twenty-five ($25.00) dollars for printing not charged to the United States. By instructions from this office, dated September 13th last, you were informed that the costs of such blanks as might be required

before they could be supplied by this Department should be included 191
in your estimate of expenses. If the item in questions, or any part thereof, is covered by the authority contained in said instructions, you may strike it out of your expense account for October, returned herewith, and include it in a separate bill, to be forwarded with proper vouchers for payment.

Very respectfully, JARVIS PATTEN,
Commissioner.

(5 sets enclosures.)

Q. Is the work incident to the discharge of the duties of your office increased so as to require the assistance of additional clerks and 192
deputies?

A. It is.

Q. State the reason for that.

A. Under the act of Congress of last year, providing for the subsidy for steam vessels carrying the U. S. mail, it was prescribed that a certain proportion of every crew should be American citizens, and that they should carry a certain number of apprentices.

I have, at present, no man who can be spared to engage the crews of the steam vessels at present carrying the mails under that law, but as they run only to the West Indies, and are exempt in their
65 shipment from the jurisdiction of the shipping commissioner, I have only been able to send a deputy to the vessel on the 193
day of sailing, and make the men take an oral oath that they are American citizens. It is necessary that the crews of steam vessels shall be shipped and discharged on the vessel itself, as many of them can not leave the ship to visit the shipping commissioner's office and sign the articles. The Treasury Department, however, has recently instructed me (decision 13417), in such cases, as follows: No statutory provision containing the requirement that the crew of a steamship sailing from New York to the West Indies Islands is recalled, requiring that such shipments should be made before the commissioner; but, if they are not made before the shipping commissioner, it does 194
not appear how he can well give a certificate as to citizenship as prescribed by the Post-Office Department. If this is to be accepted as the rule, I should be compelled immediately to employ another deputy, with compensation at the rate of $950 per annum.

The new vessels of the International Navigation Co., beginning with the New York, and sailing from this port on Feb. 25th, 1893, and her companions making frequent sailings, having recently come under the flag of the U. S., are also brought within the jurisdiction of the shipping commissioner, as they sail for ports in Europe, and as they carry crews numbering nearly 300 men and advertise frequent 195
departures, if they ship their crews here, and it will necessitate the employment of still another deputy, whose compensation could not be less than $950 per annum. But as the act of June, 1884, section 19, provided that shipment might be made on vessels making regular and stated trips between the U. S. and foreign countries for a definite time, and on the return of such vessels to the U. S. such seamen should be reshipped without the payment of any additional fees, it is

obvious that while such additional business might not increase
196 66 the earnings of the office, it would necessarily increase the expenditures of the office in salaries, and, perhaps, finally increase the expenses, so that the shipping commissioner's compensation would necessarily have to be diminished in consequence of such increase of business.

Q. Your last answer is predicated upon the letter from the Treasury Department fixing your compensation at $4,000 per annum and one-half of the net surplus earnings of the office, is it not?

A. Yes.

Q. Then, I understand you to say by that answer that in the event of your being obliged to employ additional help, ad infinitum, as the
197 Congress of the U. S. may see fit, either by legislation or otherwise, to increase the duties of your office, that such surplus earnings would be wiped out by the expenses of such additional clerical assistance?

A. It would be so reduced, if the vessels making continuous voyages for said ports continued exempt from signing service vouchers
198 for reshipments.

199 67 (The petitioner's counsel now offers in evidence the petitioner's report as U. S. shipping commissioner at the port of New York, dated July 10th, 1888, which is marked Petitioner's Exhibit No. 22.)

OFFICE OF THE U. S. SHIPPING COMMISSIONER,
New York City, July 10th, 1888.

One.

Number of seamen reshipped without charge..... 3,746

200 *Two.*

Number of vessels for which crews were engaged 1,994
Number of seamen engaged 14,191

* * * * * * *

Six.

Number of crews paid off, for which half fee was charged..... 55
Number of seamen paid off and discharged therefrom..... 434

Seven.

201 Number of crews paid off, for which full fee was charged..... 432
Number of seamen paid off and discharged therefrom..... 9,521

Adjourned until 2 p. m., Feb. 24th, 1893.

68 United States circuit court, southern district of New York. 202

JAMES C. REED
vs.
THE UNITED STATES OF AMERICA.

Met pursuant to adjournment from Feb. 23d, 1893.

Appearances: 203

John A. Shields, esq., referee.

G. E. P. Howard, attorney for petitioner, No. 35 Wall st., N. Y. City; John O. Mott, assistant U. S. attorney, for the United States, defendant.

Mr. WILLIAM M. HOFCUT, a witness produced on the part of the petitioner, having been duly sworn:

Q. Where do you reside?

A. At Blooming Plains, N. Y.

Q. What is your business? 204

A. I am a clerk in the office of the sup. of repairs of the United States.

Q. Have you charge of the files of that office?

A. Partially.

Q. Were you requested to produce here, on behalf of the petitioner, certain letters from the files of your office?

A. I was.

Q. Have you produced such letters?

A. Yes; or that is, such as Mr. Reed thinks will cover the case.

69 (Counsel for petitioner now offers in evidence a telegram, 205 dated Washington, D. C., April 24th, 1886, from C. S. Fairchild, Acting Secretary, and which is marked Petitioner's Exhibit No. 23.)

WASHINGTON, D. C., *April 24th*, 1886.

WM. J. FRYER, Jr.,
Supt. of Repairs, Custom-House or Post-Office, N. Y. City:

Alterations of Barge Office and authorized cost limited to $2,500. Letter by mail.

C. S. FAIRCHILD,
Assistant Secretary. 206

File mark received April 26th, 4.30 p. m.

(Petitioner's counsel also offers in evidence letter from the Treasury Department, April 24th, 1886, signed by E. B. Youmans, chief clerk, which is marked Petitioner's Exhibit No. 24.)

TREASURY DEPARTMENT,
OFFICE OF THE CHIEF CLERK,
New York, April 24th, 1886.

Hon. C. S. FAIRCHILD,
Acting Secretary of the Treasury. 207

SIR: Under date of April 23rd, 1886, I transmitted a report regarding space in Barge Office and annex for occupancy of shipping

commissioner, which report was approved by the Department, under date of April 24th, 1886. After the transmission of the said report to the Department, a further examination of it shows certain changes was suggested, which, in my mind, should be made. I therefore desire to modify my former report of April 23rd, in accordance with the diagram enclosed, dated April 24th, 1886. The reason
208 70 for such modifications are, that under the plan of April 24th, no portion of the Barge Office is used by the shipping commissioner, the entry space assigned to the shipping commissioner being taken from the annex, with entrances the west side, leading to the Battery Park, with no other communication therefrom from the Barge Office to the annex. Such modified plan will relieve the Department from the objection made from the former plan, to wit: That some portion of the force of the shipping commissioner's office would have access to the iron annex reserved for the custom service, and portion of the record room, so called, can be used as a store room
209 for the effects of deceased sailors.

It is thought advisable, for the present, to have the partition running through the annex only, erected to the height of 12 ft.

Very respectfully,

E. B. YOUMANS,
Chief Clerk.

(Petitioner's counsel also offers in evidence letter from the Treasury Department of April 26th, 1886, to William J. Fryer, jr., supt.
210 of repairs, which is marked Petitioner's Exhibit No. 25.)

TREASURY DEPARTMENT,
OFFICE OF SUPERVISING ARCHITECT,
Washington, April 26th, 1886.

WILLIAM J. FRYER, Jr.

SIR: Your letter of the 25th instant is received, recommending a partitioning off of a portion of the annex building of the Barge Office, and the forming of a series of offices within said partition space for the use of the shipping commissioner, the cost not to exceed $2,500.

211 71 A telegram was sent to you on the 24th instant, ordering the work done at a cost not to exceed $2,500 (twenty-five hundred dollars).

Please have this work executed as soon as possible, as the public exigencies requires its immediate performance, and submit through the custodian, vouchers in duplicate, for the expense incurred, made payable from the appropriation for salaries and expenses of shipping commissioner's expenditures.

M. E. BELL,
Supervising Architect.

212 (Petitioner's counsel also offers in evidence letter from the Treasury Department, dated April 28th, 1886, to William J. Fryer, jr., which is marked Petitioner's Exhibit No. 26.)

TREASURY DEPARTMENT,
OFFICE OF THE SUPERVISING ARCHITECT,
April 28th, 1886.

Mr. WM. J. FRYER, Jr.,
Supt. of Repairs, New York.

SIR: I enclose copy of supplementary report, dated the 24th instant, made by Chief Clerk Youmans, and modified plans required in the Barge Office annex, for the accommodation of the shipping 213
commissioner, and instructions to you of the 24th and 26th instants are hereby modified accordingly.

Respectfully, yours,
M. E. BELL,
Supervising Architect.

Q. These letters were taken from the files of the supt. of repairs, and you were instructed to return them to such files?
A. I was.
Adjourned until 12 o'clock m., Feb. 25th, 1893.

72 U. S. circuit court for the southern district of New York. 214

JAMES C. REED
vs.
THE UNITED STATES OF AMERICA.

Met pursuant to adjournment of Feb. 24th, 1893.
Present: John A Shields, referee; G. E. P. Howard, attorney for 215
petitioner; John O. Mott for the United States, defendant.

JOEL B. ERHARDT, a witness produced on the part of the petitioner, having been duly sworn:

Q. What is your full name?
A. Joel B. Erhardt.
Q. And you are of full age?
A. Yes.
Q. Where do you reside?
A. New York City.
Q. Were you, at one time, an official of the Government of the 216
United States?
A. Yes, I have been.
Q. What offices have you held, since 1880, under the Government of the United States?
A. I have been U. S. marshal for the southern district of New York, and also collector of the port of New York.
Q. While you were collector of the port of New York, and U. S. marshal for this district, did you, as such official, have occasion to use stationery in these offices, also a telephone, "Maritime Register," and ice?
A. Yes.
73 Q. And by whom was the expense of such necessary 217
expenses paid, if you know?
A. By the Government of the United States.
Q. Were you also at one time custodian of a portion of the buildings of the United States located in New York City?
A. Yes.

Q. As such custodian, did you have charge of the Barge Office in the city of New York?

A. Yes.

Q. Were you at any time instructed by the Secretary of the Treasury to evict the U. S. shipping commissioner of this port from a portion of the Barge Office premises?

A. I did receive such orders, and I did so eject him.

218 Q. How long a time did you give the shipping commissioner in which to remove the effects of the shipping commissioner's office from the Barge Office in 1890?

A. I think, the orders from the Department being imperative, I gave him no time.

Q. You directed him to vacate at once?

A. I did.

Q. And did he so vacate?

A. He did.

Q. Have you at any time seen the offices which were occupied by the U. S. shipping commissioner, at No. 25 Pearl street, after he was evicted from the Barge Office?

A. I have seen the offices. They are on the corner of Whitehall and
219 Pearl streets, and are now occupied by the shipping commissioner, and to which he removed after I evicted him.

Q. And are you acquainted, generally, with the rental values of quarters similar to those?

A. I have a general idea of what such quarters are worth.

Q. And, in your opinion, would $1,200 a year be a reasonable and fair rental of those quarters?

A. I think it is a very reasonable sum.

Q. From your experience as collector of the port of New York, can you state whether or not it is necessary for the shipping commissioner at this port to have office rooms similar to those
220 74 which he now occupies at No. 25 Pearl street?

A. It is necessary for him to have quarters—good-sized quarters.

Q. And, in your opinion, are those quarters at No. 25 Pearl street more than adequate?

A. They are not more than adequate.

Q. And, in your opinion, would it be necessary in such an office as that of the U. S. shipping commissioner of the port of New York to have for use stationery, telephone, Maritime Register, ice, and fuel?

A. I should say so; very necessary.

Q. As custodian of the U. S. buildings in 1890, did you furnish
221 the U. S. shipping commissioner at that time with any facilities for removing his official data, office furniture, and fixtures from the Barge Office?

A. I think not.

Cross-examination waived.

Signature of witnesses waived.

EDWARD MITCHELL,
U. S. Attorney.

G. E. P. HOWARD,
Atty. for Petitioner.

(Endorsed:) U. S. circuit court, southern district of New York. 222
James C. Reed, petitioner, vs. The U. S., defendant. Testimony on reference. U. S. circuit court. Filed Apr. 6, 1893. John A. Shields, clerk.

75 United States circuit court for the southern district of New 223
York.

JAMES C. REED, PETITIONER,
vs.
UNITED STATES OF AMERICA, DEFENDANT.

To the Judges of the Circuit Court of the United States for the Southern District of New York: 224

Pursuant to the order of reference made herein, on the sixteenth day of February, 1893, I have the honor to submit herewith the evidence taken before me as referee, and beg leave to present the following opinion:

This is an action brought against the United States of America, under the act of Congress of March 3rd, 1887 (chapter 359), by James C. Reed, the present shipping commissioner at the port of New York, to recover the sum of $4,033.71, claimed to have been necessarily disbursed by him as such shipping commissioner, between July 1st, 1886, and March 1st, 1891, for expenses incident to the maintenance of the 225
office and the discharge of the duties imposed upon the petitioner by the statutes of the United States and the regulations of the Treasury Department.

It appears from the evidence herewith submitted that the petitioner held the office of shipping commissioner at the port of New York, by the appointment of the circuit court for this district, prior to July 1st, 1884, at which time the act of June 26th, 1884, went into effect, by which act the power to appoint commissioners was given to
76 the Secretary of the Treasury, together with the duty of deter- 226
mining the compensation to be paid them for their services and to their clerks and assistants.

This last-mentioned act also made it the duty of the Secretary of the Treasury to regulate the mode of conducting the business in the shipping offices of the United States, and to audit and adjust the expenditures made by the shipping commissioner, in the mode and manner provided for expenditures in the collection of customs.

Under the authority of the act of June 26th, 1884, the Secretary of the Treasury fixed the compensation of the petitioner herein, as shipping commissioner at the port of New York, at $4,000 per annum, 227
and one-half of the net surplus of the fees of the office, after the payment of salaries and expenses authorized, such compensation not to exceed, however, the sum of $5,000 in any one year.

No change has been made in the compensation to be allowed and paid to the petitioner, as such shipping commissioner at the port of New York.

The fees of the office have exceeded the expenditures thereof, and the petitioner has been allowed and paid each year the maximum sum allowed by the act of 1872, to wit, $5,000.

The expenses incident to the maintenance of the petitioner's office, rent, fixtures, salaries, assistants, clerks, repairs, blank books, etc.,
228 were prior to July 1st, 1886, allowed and paid by the United States.

On July 1st, 1886, the act of June 19th, 1886, which amended the acts of 1872 and 1884, went into effect.

This act did not change the compensation of shipping commissioners, but, in terms, provided that they should be paid the same compensation theretofore allowed out of any monies in the Treasury of the United States, not otherwise appropriated.

This act, however, made no provision for expenses incident
77 to the maintenance of the shipping offices and the discharge of
229 the duties imposed upon shipping commissioners by statutes other than was provided for in the payment of the necessary clerks and assistants. No provision was made for office rent, fixtures, fuel, blanks, stationery, books of account, use of telephone, use of safe deposit vault, ice, or, in fact, any necessary expense of any kind or description.

Subsequently to July 1st, 1886, the petitioner was required to perform the same duties theretofore required of him, and the same necessity for the use of suitable offices, fixtures, fuel, blanks, books of account, stationery, telephone, ice, use of safe deposit vaults, etc., etc., existed; but, in view of the fact that the Congress of the United
230 States had failed to make a specific appropriation to defray such necessary expenses, the Secretary of the Treasury declined to audit and pay the vouchers submitted by the petitioner, even though, as it appears by the letters and telegrams to the Secretary of the Treasury, such expenses were incurred by his direction.

That these items of expense were clearly incident to the office is admitted by the fact of their allowance and the payment of the cost thereof by the United States from 1872 to July, 1886, and from the further fact that during a portion of the time, between 1886 and
231 1891, the United States provided heat, quarters, etc., etc., for the petitioner, in the building owned by the United States Government, without charge.

Without incurring such expenses the duties of the office could not have been properly discharged, and the objects of the various statutes in relation to the shipping and discharging of seamen and the care of the deceased seamen's effects would have become, except in ports where the business of the shipping commissioner was conducted in a Government building, nullative, unless it is held that such incidental expenses were to be paid by the petitioner out of the compen-
232 78 sation allowed for his personal services. This point was fully discussed by the circuit judge for this district and finally disposed of (13th Blatchford, 339) in an opinion which the learned judge held that such expenses were not to be paid out of the salary or emolument of the commissioners.

A similar principle of law is laid down in the case of Andrews against the United States (Second Story's Reports, 202. 211), in which case the learned judge held that expenses of a similar kind were incident to the office and should be allowed as proper charges against the United States.

No question is made by the accounting officers of the Government that the sundry sums sought to be recovered were not actually disbursed by the petitioner for necessary expenses incident to the conduct of his office; but, on the contrary, the Secretary of the Treasury urges upon Congress the duty of providing for the payment thereof, by means of a specific appropriation in the deficiency bill. 233

Congress has seen fit, from time to time, to impose certain duties upon the shipping commissioners of the United States, and the discharge of the same necessitates the use of proper and commodious quarters for the use of the shipping commissioner, his clerks and assistants, and the citizens having business with the shipping commissioner under the statutes. 234

Accounts must be kept with the vessels, captains, and owners thereof doing business with the shipping commissioner, and to enable the shipping commissioner to comply with the statutes and regulations relating to his official reports to the Secretary of the Treasury. The shipping commissioner must, within reasonable limits, avail himself of such conveniences as are provided by science and the arts for the more speedy and perfect discharge of his duties.

79 The port of New York is practically the maritime port of this country. Its shipping interests and the jurisdiction of its commissioner extends along both banks of the Hudson River, the New York and Brooklyn shores, and the East River and Bay. In order to properly discharge the duties required of him under the statutes and regulations, it is my opinion an absolute necessity that he should provide himself with a telephone, safe deposit vault, Maritime Register, ice, books, blanks, etc., etc., and they are each and all incident to the office and a proper charge against the United States. 235

The absurdity of any other view of this question, seems to me, is very aptly presented by the petitioner in his letter to the Secretary of the Treasury, dated October 19th, 1890, which is set out in full in the minutes of the testimony herein. 236

After a careful consideration of all the evidence submitted, and the various statutes bearing upon the duties of the petitioner as United States shipping commissioner, I am of the opinion that the items of expense set out in the bill of particulars annexed to the petition herein was necessarily incurred by the petitioner for the proper conduct of the public business imposed upon him by law, and were and are incident to the office held by the petitioner and are a proper charge against the United States of America, the defendant herein. 237

New York, March 13, 1893.

JOHN A. SHIELDS, *Referee.*

(Endorsed:) Circuit court of the United States for the southern district of New York. James C. Reed, petitioner, vs. United States of America, defendant. Opinion of referee. U. S. circuit court. Filed Apr. 6, 1893. John A. Shields, clerk.

238 80 Circuit court of the United States for the southern district of New York.

JAMES C. REED, PETITIONER,
vs.
THE UNITED STATES OF AMERICA, defendant.

Under act of 1887. Findings.

239 *Findings of fact.*

First. That the petitioner, James C. Reed, was duly appointed the shipping commissioner of the United States of America at the port of New York, and that he duly qualified and assumed and entered upon the discharge of the duties of such office prior to the first day of July, 1884.

Second. That thereafter, and on or about the 26th day of August, 1884, the Secretary of the Treasury of the United States of America,
240 under and pursuant to the direction and powers contained in the act of Congress entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade and for other purposes," approved from June 26th, A. D. 1884, determined and fixed the compensation of the petitioner as such shipping commissioner at the port of New York at the sum of four thousand dollars per annum, and in addition thereto one-half of the net surplus of the receipts of the office of such commissioner from fees earned, after the payment of salaries and expenses, not to exceed, however, the maximum sum of five thousand dollars in any one year.

241 81 Third. That the petitioner herein continued to hold said office and to discharge the duties imposed upon him as such shipping commissioner from July 1st, A. D. 1884, to March 1st, A. D. 1891.

Fourth. That during the period between July 1st, 1884, and March 1st, 1891, no change or modification in compensation to be paid to and received by the said petitioner as such shipping commissioner was made.

Fifth. That for the fiscal year commencing July 1st, 1886, down to the 1st day of March, 1891, the surplus earnings of the office of
242 shipping commissioner at the port of New York, of service fees, exceeded the necessary expenses incident to the conduct thereof and the discharge of the duties of such shipping commissioner, including the compensation of the petitioner, by the sum of twenty-four thousand seven hundred and ninety-five dollars and one cent.

Sixth. That the petitioner has been allowed and paid each year, from the 1st day of July, 1884, down to the 1st day of March, 1891, as compensation for his services as shipping commissioner at the port of New York, at the rate of five thousand dollars per
243 annum.

Seventh. That from the 1st day of July, 1884, to the 20th day of May, 1886, the office of the petitioner, as shipping commissioner, was located at No. 187 Cherry street, in the city of New York, and that

the rental of said premises, together with all the other expenses incident to the office and the discharge of the duties of the petitioner, were paid by the United States of America.

Eighth. That on or about the 20th day of May, 1886, the office of the petitioner was, by direction of the Secretary of the
82 Treasury, moved from No. 187 Cherry street to the United 244
States Barge Office, in the city of New York, a building owned by the United States.

Ninth. That the cost and expenses incident to such removal, and the fitting up of the United States Barge Office, were paid by the United States.

Tenth. That on or about the 10th day of April, 1890, the petitioner, by the direction of the Secretary of the Treasury, removed from the barge office, and procured offices at No. 25 Pearl street, and storage room for deceased seamen's effects at No. 19 Pearl street, at an 245
annual cost of fifteen hundred dollars.

Eleventh. That the cost of such removal and the furnishing of such offices has not been paid by the United States.

Twelfth. That between the 1st day of July, 1886, and the 1st day of March, 1891, the petitioner incurred sundry expenses, and was obliged to and did make sundry disbursements, amounting in the aggregate to the sum of four thousand and thirty-three dollars and seventy-one cents, for necessaries incident to the discharge of the duties imposed upon him by statute as such shipping commissioner, 246
including rent of offices and storage of deceased seamen's effects, furnishing cost of removal, stationery, telephone, Maritime Register, ice, freight on blanks, safe deposit vault, telegram, repairs, etc.

Thirteenth. That the items for which said sum was disbursed were incident to his office.

Fourteenth. That the said sum of four thousand and thirty-three dollars and seventy-one cents was a reasonable and fair charge for the same.

83 Fifteenth. That from time to time reports were made 247
monthly by the petitioner, as shipping commissioner, to the Secretary of the Treasury, which reports contained the items of the receipts and expenditures incurred and proposed to be incurred.

Sixteenth. That the petitioner has duly demanded payment of the said sum of four thousand and thirty-three dollars and seventy-one cents of the United States, and that no part thereof has been paid.

Conclusions of law. 248

First. That the Secretary of the Treasury was authorized to determine the compensation of the petitioner as shipping commissioner at the port of New York, and, having exercised such authority, the compensation of the petitioner remained as so fixed (to wit, five thousand dollars per annum).

Second. That the Secretary of the Treasury is authorized to regulate the mode of conducting the business in the shipping offices. 249

Third. That all expenditures made by shipping commissioners in the discharge of the duties imposed upon them by the statutes of the

United States or the regulations of the Treasury Department are to be audited and adjusted in the Treasury Department.

Fourth. The petitioner is entitled to have and receive from the United States of America the sum of four thousand and thirty-three dollars and seventy-one cents.

250 84 Judgment is therefore rendered for the petitioner for the sum of four thousand and thirty-three dollars and seventy-one cents.

WM. J. WALLACE,
Circuit Judge.

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed, petitioner, vs. The United States of America, defendant. Findings of fact and conclusions of law. U. S. circuit court. Filed Apr. 6, 1893. John A. Shields, clerk.

251 United States circuit court for the southern district of New York.

JAMES C. REED, PETITIONER,
vs.
252 THE UNITED STATES OF AMERICA, DEFENDANT. } Postea.

The petitioner above named having filed, served, and mailed his petition herein, according to the requirements of the statute in such case made and provided, and an answer having been interposed by the United States attorney for the southern district of New York, in behalf of the defendant herein, and the issue of law and fact thereby raised having come on regularly for trial before the court, and the court having written an opinion setting forth specific findings
85 of fact and conclusions of law, and rendered a decision in favor
253 of the petitioner therein for the sum of four thousand and thirty-three dollars and seventy-one cents;

Now, on motion of G. E. P. Howard, attorney for the petitioner, it is adjudged that the petitioner, James C. Reed, recover of the defendant, the United States of America, the sum of four thousand and thirty-three dollars and seventy-one cents.

Judgment signed this 6th day of April, A. D. 1893.

GILBERT C. ROGERS,
254 *Deputy Clerk.*

(Endorsed:) United States circuit court, southern district New York. James C. Reed vs. United States of America. Judgment.
255 U. S. circuit court, filed Apr. 6, 1893. John A. Shields, clerk.

256 86 United States circuit court, southern district of New York.

JAMES C. REED
vs.
THE UNITED STATES.

The above named defendant and appellant hereby assigns error to
257 the decision and conclusions of law of the circuit court for the said district, in the above entitled matter, in the following particulars:

First. The court erred in finding, as a conclusion of law, that the petitioner was entitled to receive from the United States the sum of

four thousand and thirty-three dollars and seventy-one cents over and above the sum of five thousand dollars fixed as compensation for and disbursements made by petitioner.

Second. The court erred in finding, as conclusion of law, that the petitioner was entitled to a judgment against the United States in the sum of four thousand and thirty-three dollars and seventy-one cents. 258

Third. The court erred in rendering judgment against the United States and in favor of petitioner for said sum.

EDWARD MITCHELL,
United States Attorney, for the United States, Appellant.

(Endorsed:) U. S. circuit court. James C. Reed, appellee, vs. The United States, appellant. Assignment of errors. Edward Mitchell, U. S. atty., for appellant. U. S. circuit court, filed Aug. 28, 1893. John A. Shields, clerk.

87 United States court of appeals for the second circuit. 259

JAMES C. REED
agst.
THE UNITED STATES.

To the United States Circuit Court of Appeals for the Second Circuit: 260

The Attorney-General of the United States hereby applies for the allowance of an appeal to the United States circuit court of appeals for the second circuit, from the decision and judgment of the U. S. circuit court, rendered herein on the sixth day of April, 1893.

Dated August 28th, 1893.

RICHARD OLNEY,
Attorney-General.

Tho foregoing application is granted and appeal allowed.

Dated New York, August 28th, 1893.

E. HENRY LACOMBE, 261
Judge of the U. S. Circuit Court of Appeals for the Second District.

(Endorsed:) U. S. circuit court of appeals for the second circuit. In the matter of James C. Reed agst. The United States. Application for and allowance of appeal. Edward Mitchell, U. S. attorney. Due service of a copy of the within is hereby admitted. Dated August 29, 1893. (Signed) G. E. P. Howard, atty. for petitioner. U. S. circuit court, filed Aug. 29, 1893. John A. Shields, clerk.

88 United States circuit court, southern district of New York. 262

JAMES C. REED
agst.
THE UNITED STATES.

Please take notice that the United States hereby appeals from the 263 decision of this court, rendered herein, and entered on the 6th day of

April, 1893, to th eUnited States circuit court of appeals for the second circuit.

Dated New York, Aug. 29, 1893.

Yours, &c.,

EDWARD MITCHELL,
U. S. District Attorney for the Southern District of N. Y.,
Room 50, Post-Office Building, New York City.

To G. E. P. HOWARD, Esq.,
264 *Attorney for Appellee.*

(Endorsed:) U. S. circuit court, southern district of New York. James C. Reed, agst. The United States. Notice of appeal. Edward Mitchell, U. S. attorney. Due service of a copy of the within notice of appeal is hereby admitted. Dated August 29, 1893. (Signed) G. E. P. Howard, atty. for petitioner. U. S. circuit court. Filed Aug. 29, 1893. John A. Shields, clerk.

265 89 UNITED STATES OF AMERICA, *ss.*

To JAMES C. REED:

You are hereby cited and admonished to be and appear before the United States circuit court of appeals for the second circuit, at the city of New York, not more than thirty days from date, pursuant to an appeal on the part of the United States, filed in the clerk's office of the circuit court of the United States for the southern district of Now York, in a certain suit or proceeding, entitled James C. Reed against The United States, to show cause, if any there be, why the decision of the U. S. circuit court in the said appeal mentioned should
266 not be reversed, modified, or corrected, and speedy justice should not be done in that behalf.

Given under my hand at the city of New York, in the southern district of New York, on the twenty-eighth day of August, 1883.

E. HENRY LACOMBE,
Judge of the U. S. Circuit Court of Appeals
for the Second Circuit.

EDWARD MITCHELL,
U. S. District Attorney, on Behalf
267 *of the United States, Appellant.*

(Endorsed:) U. S. circuit court of appeals for the second circuit. James C. Reed agst. The United States. Citation. Edward Mitchell, U. S. attorney. Due service of a copy of the within citation is hereby admitted. Dated August 29, 1893. (Signed) G. E. P. Howard, atty. for petitioner. U. S. circuit court. Filed Aug. 29, 1893. John A. Shields, clerk.

268 90 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John A. Shields, clerk of the circuit court of the United States of America, for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1

to 91, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of James C. Reed against The United States of America, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district 269
of New York, in the second circuit, this first day of September, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the said United States the one hundred and eighteenth.

[SEAL.] JOHN A. SHIELDS, *Clerk*. 270

91 United States circuit court of appeals for the second circuit. No. 94. October term, 1893. Submitted March 22, 1894. Decided April 19, 1894. Appeal from the circuit court of the United States for the southern district of New York. Before Judges Lacombe and Shipman.

THE UNITED STATES, APPELLANT,
vs.
JAMES C. REED, APPELLEE.

Appeal from a judgment rendered by the U. S. circuit court, southern district of New York, in favor of plaintiff for $4,033.71 in an action brought under the act of March 3rd, 1887, entitled "An act to provide for the bringing of suits against the Government of the United States" (24 Stat. at Large, 595).

LACOMBE, circuit judge.

The plaintiff, prior to July 1, 1884, had been duly appointed shipping commissioner of the United States, at the port of New York, had duly qualified and entered upon the discharge of his duties. He continued to hold that office and discharge its duties until March 1, 1891. During part of this period he occupied rooms in the U. S. Barge Office. Subsequently, by direction of the Secretary of the Treasury, he removed his offices from said Barge Office and procured offices at No. 25 Pearl st., and storage room for deceased seamen's effects at No. 19 Pearl street, in said city.

92 Between the first day of July, 1886, and the first day of March, 1891, the plaintiff incurred various expenses, and made various disbursements, amounting in the aggregate to the sum of $4,033.71, for rent of offices and storage of deceased seamen's effects, cost of said removal of his offices, for stationery, telephone service, for Maritime Register, ice, freight on blanks, safe deposit vault, telegrams, repairs, etc.

The record shows that these were proper, necessary, and reasonable expenditures required to enable the commissioner to comply with the statutes and regulations relating to his official duties. Without them it would not be practicable for him to discharge those duties, to make his official reports, nor to maintain the "suitable premises" for the transaction of the public business which the law requires (U. S. Rev. Stat., sec. 4507). That any of the items charged for are unreasonable in amount or the prices excessive nowhere appears.

It is unnecessary to enter into any extended discussion as to the provisions of the original act of 1872, which created the office, regulated its administration, and fixed the fees to be paid, and the compensation to be received by the commissioner out of those fees. Reference may be had to In re Shipping Commissioner (13 Blatchf., 337). Nor has section 4507, U. S. Revised Statutes, which requires the commissioner to lease suitable premises at his own cost, any bearing upon the questions here raised, inasmuch as the subsequent act of June 26, 1884, ch. 121, sec. 27 (23 St., 59), is controlling of the case at bar. It reads as follows:

"SECTION 27. The Secretary of the Treasury shall appoint a commissioner for each port of entry which is also a port of ocean navigation, and which in his judgment may require the same; such commissioner to be termed a shipping commissioner, and may from time to time remove from office any such commissioner whom he may have reason to believe does not properly perform his duties, and shall then provide for the proper
92 performance of his duties until another person is duly appointed in his place: Provided, That shipping commissioners now in office shall continue to perform the duties thereof until others shall be appointed in their place. Shipping commissioners shall monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury, who shall determine their compensation, and shall from time to time determine the number and compensation of the clerks appointed by such commissioner with the approval of the Secretary of the Treasury, subject to the limitations now fixed by law. The Secretary of the Treasury shall regulate the mode of conducting business in the shipping offices to be established by the shipping commissioners, as hereinafter provided, and shall have full and complete control over the same, subject to the provisions herein contained; and all expenditures by shipping commissioners shall be audited and adjusted in the Treasury Department in the mode and manner provided for expenditures in the collection of customs. All fees of shipping commissioners shall be paid into the Treasury of the United States, and shall constitute a fund which shall be used, under the direction of the Secretary of the Treasury, to pay the compensation of said commissioners and their clerks and such other expenses as he may find necessary to insure the proper administration of their duties."

Expenses such as these now under consideration appear to have been audited by the Treasury Department as a proper charge against the United States and paid down to July 1st, 1886. Where the statute, which renders such expenditure a necessary incident to an office, does not expressly or by clear implication provide that they shall be paid for by the incumbent of the office out of his compensation, they are, under the authorities, a proper charge against the United States. (Andrews v. U. S., 2 Story, 202; U. S. v. Flanders, 112 U. S., 92.) The statute last quoted expressly provides for their audit, adjustment, and payment.

94 The appellant refers to the act of June 19, 1886 (24 Stat, at L., 79), the first section of which is as follows:

"SECTION 1. On and after July 1, 1886, no fees shall be charged or collected by inspectors of steam vessels or shipping commissioners, for the following services to vessels of the United States * * * [Here follows a long enumeration] * * *. Collectors or other officers, inspectors of steam vessels and shipping commissioners, who are paid wholly or partly

by fees, shall make a detailed report of such services and the fees provided by law to the Secretary of the Treasury, under such regulation as that officer may prescribe; and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the passage of this act; also such compensation to clerks of shipping commissioners as would have been paid them had this act not passed: Provided, That such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered."

The contention that this section repeals the provisions of the act of 1884 (supra) as to expenditures by shipping commissioners other than clerks is wholly without merit. There is nothing in the act last quoted which is susceptible of any such construction. It contains no repealing clause, it does not refer directly or indirectly to such expenditures, nor does it necessarily imply any intention to impose the burden of maintaining suitable premises for the transaction of the public business, which the shipping commissioner is expressly required to procure (sec. 4507, U. S. Rev. Stats.), upon him instead of upon the Government which requires it to be maintained and which had assumed the obligation of maintaining it and paying the necessary expenses thereof under the acts of 1872 and 1884.

There is no weight in the suggestion that at the time the compensation of the shipping commissioner was fixed under the section above
95 quoted from the act of 1884, "he was informed that it was to be understood that from such compensation he should pay all his official expenses except for employees and rent." The law regulating this subject is to be found not in the "understanding" of some former Secretary of the Treasury, nor in the "information" given to the plaintiff, but in the statute itself, which is too clear and unambiguous to admit of but one construction.

The judgment of the circuit court is affirmed.

Henry C. Platt, United States attorney, and Charles D. Baker, assistant United States attorney, for the appellant; George E. P. Howard, for the appellee.

96 At a stated term of the United States circuit court of appeals for the second circuit, held in the U. S. court room in the U. S. court-house, in the city of New York, on the day of April, 1894.

Present, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, judges.

JAMES C. REED, PETITIONER & APPELLEE,
against
THE UNITED STATES OF AMERICA, DEFENDANT & APPELLANT.

The appeal of said defendant and appellant, the United States of America, from the judgment of the circuit court of the United States for the southern district of New York, entered on the 6th day of April, 1893, having come on to be heard and having been argued by counsel of the respective parties, and after due deliberation had:

It is now ordered, adjudged, and decreed that the said judgment of said circuit court be, and the same hereby is, in all things affirmed, with costs

of this court to the said James C. Reed, appellee, to be taxed by the clerk of this court and to be recovered by said appellee in said circuit court.

It is further ordered, that this cause be remanded to said circuit
97 court with instructions to proceed therein according to law and that a mandate issue to said circuit court accordingly.

E. H. L.
N. S.

Approved as to form.

HENRY C. PLATT, *U. S. Atty.*

(Endorsed:) U. S. circuit court of appeals. James C. Reed vs. The United States of America. Order affirming judgment. G. E. P. Howard, attorney for appellee, 32 Nassau st., N. Y. City. To Henry C. Platt, esq., attorney for appellant. United States circuit court of appeals, second circuit. Filed May 2, 1894. John A. Shields, clerk.

98 United States circuit court of appeals for the second circuit.

UNITED STATES, APPELLANT,
vs.
JAMES C. REED, APPELLEE.

To the Honorable the United States Circuit Court of Appeals:

The petition of the United States respectfully shows:

That upon the 27th day of March, 1891, the above-named appellee filed his petition in the circuit court of the United States for the southern district of New York against the above-named appellant, the United States, wherein said James C. Reed claimed that the said United States was indebted to him in the sum of $4,033.71 for disbursements by him as shipping commissioner at the port of New York.

That on the 6th April, 1893, a final decree was made and pronounced in the cause wherein it was in substance adjudged and decreed that the said James C. Reed recover of the United States the sum of $4,033.71.

That on the 29th August, 1893, the United States appealed from said final decree to the United States circuit court of appeals, which appeal was duly brought to argument in said court, and on the 19th
99 April, 1884, said final decree was therein duly affirmed.

Wherefore, by reason of the errors duly assigned herein, the said United States hereby present their petition and pray that the said proceedings and decree may be brought before the Supreme Court of the United States, that said Supreme Court may grant them such relief as may be proper in the premises.

And your petitioner will forever pray.

WALLACE MACFARLANE,
United States Attorney for the Southern District of New York.

The above application is granted and the appeal allowed.
Dated October 5th, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

(Endorsed:) U. S. circuit court of appeals, second circuit. United States, appellant, vs. James C. Reed, appellee. Petition for the allowance of appeal. Wallace Macfarlane, United States attorney, attorney for plaintiff. United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

100 United States circuit court of appeals for the second circuit.

JAMES C. REED, APPELLEE,
vs.
THE UNITED STATES, APPELLANT.

SIR: Please take notice that the United States, the above-named appellant, hereby appeals from the order and decree rendered herein in the United States circuit court of appeals for the second circuit on the 2nd day of May, 1894, affirming a judgment rendered in the United States circuit court in the southern district of New York in favor of the above-named plaintiffs and appellee, James C. Reed, and from the whole of said order and decree.

Dated New York, October 5, 1894.

WALLACE MACFARLANE,
U. S. Atty., Southern Dist. N. Y.

To G. E. P. HOWARD,
Attorney for Plaintiff and Appellee.

(Endorsed:) U. S. circuit court of appeals, second circuit. James C. Reed, appellee, versus United States, appellant. Notice of appeal. Wallace Macfarlane, United States attorney, attorney for defendant. United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

101 Circuit court of appeals for the United States, of October term in the year of our Lord one thousand eight hundred and ninety-three.

THE UNITED STATES, APPELLANT,
against
JAMES C. REED, APPELLEE. } On appeal.

Afterwards, to wit, on the last Tuesday of October, in this same term, before the judges of the United States circuit court of appeals at the Federal court and post-office building, in the city of New York, comes the said United States, by Wallace Macfarlane, their attorney, and say that in record and proceedings aforesaid there is manifest error in this, to wit:

That the petition aforesaid and the matters therein contained are not sufficient in law for the said James C. Reed to have or maintain his aforesaid action thereof against the United States.

There is also error in this, to wit, that the court erred in finding as a conclusion of law that the petitioner was entitled to receive from the United States the sum of four thousand and thirty-three dollars and seventy-one cents over and above the sum of five thousand dollars fixed as compensa-

tion for and disbursements made by said James C. Reed; also in
102 this that the court erred in finding as conclusion of law that the petitioner was entitled to judgment against the United States in the sum of four thousand and thirty-three dollars and seventy-one cents.

There is also error in this, that by the record aforesaid it appears that the judgment aforesaid given was given for the said James C. Reed against the United States, whereas by the law of the land the said judgment ought to have been given for the said United States against the said James C. Reed, and the said United States prays that the judgment aforesaid for the errors aforesaid and others in the record and proceedings aforesaid may be reversed, annulled, and altogether held for nothing, and that they may be restored to all things which they have lost by occasion of the said judgment.

WALLACE MACFARLANE,
United States Attorney, Southern District, N. Y.

(Endorsed:) U. S. circuit court of appeals, second circuit. United States, appellant, versus James C. Reed, appellee. Assignment of errors. Wallace Macfarlane, United States attorney, attorney for plaintiff. United States circuit court of appeals, second circuit. Filed Oct. 5, 1894. John A. Shields, clerk.

103 By the honorable E. Henry Lacombe, one of the judges of the circuit court of appeals of the United States for the second circuit, to James C. Reed.

Whereas the United States has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of appeals of the United States for the second circuit, made in favor of you; therefore you are hereby cited to appear before the said Supreme Court, at the city of Washington, on the 29th day of October, 1894, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, on the 5th day of October, 1894.

E. HENRY LACOMBE,
U. S. Circuit Judge.

104 (Indorsed:) SIR: You will please take notice that a , of which the within is a copy, was this day duly entered in the within entitled action, in the office of the clerk of the . Dated N. Y., , 189 . Yours, etc., U. S. attorney, attorney for plaintiff. Attorney for .

(Indorsed:) U. S. circuit court of appeals, second circuit. United States, appellant, versus James C. Reed, appellee. Citation. Wallace Macfarlane, United States attorney, attorney for plaintiff. Due service of a copy of the within is hereby admitted. New York, , 189 . , attorney for defendant, to , attorney for defendant. United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

105 United States circuit court of appeals, second circuit.

UNITED STATES, PLAINTIFFS IN ERROR,
vs.
JAMES C. REED, DEFENDANT IN ERROR.

CITY AND COUNTY OF NEW YORK,
Southern district of New York, ss:

JOHN V. B. MERRITT, being duly sworn, says that he is about the age of 21 years and upwards; that on the 6th day of October, 1894, at No. 32 Nassau street, New York City, N. Y., he personally served the annexed citation, notice of appeal, assignment of errors, and petition for appeal on G. E. P. Howard, esq., attorney for the defendant in error, by delivering to and leaving with said Howard copies thereof, and that he knew the person so served to be the attorney for the defendant in error.

JOHN V. B. MERRITT.

Subscribed and sworn to before me this 18th day of October, 1894.

GILBERT E. ROGERS,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

(Endorsed:) United States circuit court of appeals, second circuit. Filed Oct. 18, 1894. John A. Shields, clerk.

106 (Indorsed:) 282. The United States, appellant (Edward Mitchell), vs. James C. Reed, appellee (G. E. P. Howard). 1893, Sep. 14, filed transcript of record. Appeal from circuit court U. S. south. dist. N. Y. Nov. 16, filed 9 copies record, delivered 3 copies each side. 1894, Feb. 7, filed appellee's brief. Mch. 20, filed applt.'s brief. Apl. 19, judgment affirmed. Opinion, Lacombe, J. May 2, filed & entd. order for mandate. May 4, filed bill of costs. May 5, issued mandate. Oct. 5, filed assignment of errors. (Appeal to Supreme Court.) Oct. 18, filed notice of appeal, petition (allowed Oct. 5, '94) and citation (with affidavit of service).

107 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 106, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of The United States, appellant, vs. James C. Reed, appellee, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 12th day of November, in the year of our Lord one thousand eight hundred and ninety-four, and of the independence of the said United States the one hundred and nineteenth.

[SEAL.] JAMES C. REED, *Clerk.*

(Indorsed:) Examined. J. E. Dodge, Asst. Atty. Genl.

(Indorsment on cover:) Case No. 15729. Term No. 482. The United States, appellant, vs. James C. Reed. U. S. circuit court of appeals, second circuit. Filed November 15th, 1894.

167-664

Office Supreme Court, U. S.
FILED.
JAN 25 1897
JAMES H. McKENNEY,
CLERK.

167-664.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT,
v.
JAMES C. REED, APPELLEE.
} Nos. 189 and 190.

BRIEF FOR APPELLANT.

JOSHUA ERIC DODGE,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES, APPELLANT, v. JAMES C. REED, APPELLEE. } Nos. 189 and 190.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS.

This case is an appeal by the United States from a judgment of the circuit court of appeals for the second circuit affirming a judgment against it by the circuit court for said circuit.

The following are the material facts in the case as found by the court at the original trial:

> Prior to the 1st day of July, 1884, the plaintiff had been duly appointed shipping commissioner of the United States of America at the port of New York, and before said date duly qualified and entered upon the discharge of his duties.
>
> About the 26th day of August, 1884, the Secretary of the Treasury, pursuant to act of Congress

of June 26, 1884, fixed the compensation of the plaintiff as such commissioner at the sum of $4,000 per annum, and in addition thereto, one-half of the net surplus of the receipts of the office of such commissioner from fees earned after the payment of salaries and expenses, not to exceed, however, a maximum compensation of $5,000 ["it being understood that from such compensation you shall pay all your office expenses except for employees and rent," was the next clause of the order quoted from, but was inexplicably omitted by the court].

The plaintiff continued to hold said office and to discharge the duties imposed upon him as such shipping commissioner from July 1, 1884, to April 1, 1893.

During the period between July 1, 1884, and April 1, 1893, no change or modification in the compensation of the plaintiff as such shipping commissioner was made.

From July 1, 1884, to April 1, 1893, claimant has been paid compensation at the rate of $5,000 per year. (Finding 6, p. 48 of 190, and p. 42 of 189.)

About the 20th day of May, 1886 the office of the plaintiff was, by direction of the Secretary of the Treasury, moved from 187 Cherry street, at which place he had continuously maintained his office, to the United States Barge Office.

The cost and expenses incident to such removal, and the fitting up of such Barge Office, were paid by the United States.

On or about the 10th day of April, 1890, the plaintiff was directed by the Secretary of the Treasury to remove his offices from the said Barge Office, and he therefore procured offices at No. 25 Pearl street, and storage room for deceased seamen's effects at No. 19 Pearl street, at an annual cost of $1,500.

> Between the 1st day of July, 1886, and the 1st day of March, 1891, the plaintiff incurred various expenses and made various disbursements, amounting in the aggregate to the sum of $4,033.71, for rent of offices and storage of deceased seamen's effects, cost of said removal of his offices, for stationery, telephone services, for "Maritime Register," ice, freight on blanks, safe-deposit vaults, telegrams, repairs, etc. [this consists of rent, $1,343.32, and sundry expenses, $2,690.39].
>
> This action was brought under the act of 1887, above referred to, to recover the sum of $4,033.71, for the expenses and disbursements above referred to, and which the Secretary of the Treasury refused to pay.

From this statement it will be seen that from the 1st day of July, 1886, to the 1st day of March, 1891, appellee was allowed annual compensation of $5,000 and none of the expenses incident to the maintenance of his office, except for a portion of that time he was allowed to occupy rooms in the Barge Office in the city of New York free of rent.

Together with this case is another, being No. 189, on the docket, which presents solely a claim for the recovery of rent between March 1, 1891, to April 1, 1893, for $3,125, and which is controlled by exactly the same record and facts as the portion of the claim in case 190, which is for rent. We therefore shall deem it unnecessary to file further brief in 189, as the discussion of the two elements, rent and certain office expenses, in this will necessarily include that case.

ARGUMENT.

The legislation under which the claimant was operating consists of three stages: First, that of 1872, which was adopted into the Revised Statutes, in title 8, under the head "Merchant seamen," commencing with section 4501; secondly, the amendment of June 26, 1884, and thirdly, the amendment of June 19, 1886. That legislation, so far as material to the questions here presented, is substantially as follows:

The Revised Statutes provided for the collection of fees by the shipping commissioners and gave no power to pay them any sums in addition to the fees which they respectively collected, and section 4594, provided as follows:

> In no case shall the salary, fees, and emoluments of any officer appointed under this title [shipping commissioners] be more than five thousand dollars per annum; and any additional fees shall be paid into the Treasury of the United States.

This was accompanied by section 4507, which is as follows:

> Every shipping commissioner shall *lease, rent, or procure, at his own cost*, suitable premises for the transaction of business and for the preservation of the books and other documents connected therewith; and these premises shall be styled the shipping commissioner's office.

Under this act it was found that while the commissioners at a few of the larger ports collected fees much in excess of the maximum compensation permitted by

law, there were many other places where shipping commissioners were desirable, at which the fees were wholly inadequate to secure proper attention to the duties of the office. Accordingly, there was enacted the *Act of June 26, 1884* (23 Stat. L., 53, 59, sec. 27), intended to give power to the Secretary of the Treasury to provide, out of the surplus fees earned at other ports, such compensation as he should deem reasonable, to any and all commissioners, and in which he was not limited by the amount of fees earned by the respective commissioners. The material part of that statute is as follows:

> Shipping commissioners shall monthly render a full, exact, and itemized account of their receipts and expenditures to the Secretary of the Treasury, who shall determine their compensation, and shall from time to time, determine the number and compensation of the clerks appointed by such commissioner with the approval of the Secretary of the Treasury, *subject to the limitations now fixed by law.*
>
> * * * * *
>
> All fees of shipping commissioners shall be paid into the Treasury of the United States and shall constitute a fund which shall be used under the direction of the Secretary of the Treasury to pay the compensation of said commissioners and their clerks and such other expenses as he may find necessary to insure the proper administration of their duties.

In 1886 it was apparently determined by Congress to relieve the shipping business of the burden of fees, and therefore the collection of fees was abolished by the *Act of June 19, 1886* (24 Stat. L., 79, sec. 1), which also made

provision as to the questions of compensation here involved, as follows:

> Collectors or other officers of customs, inspectors of steam vessels, and shipping commissioners who are paid wholly or partly by fees, shall make a detailed report of such services and the fees provided by law to the Secretary of the Treasury, under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the passage of this act; also such compensation to clerks of shipping commissioners as would have been paid them had this act not passed: *Provided*, That such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered.

It will thus be seen that the effect of the act of 1886 was simply to continue the compensation of shipping commissioners on exactly the same terms as under the act of 1884; that is to say, in the discretion of the Secretary of the Treasury as to amount to be paid, subject the same restrictions which were perpetuated by the act of 1884, from the Revised Statutes; except that by the act of 1886 no authority was given to the Secretary of the Treasury to pay any expenses other than those of compensation of clerks, while in the act of 1884 express authority to pay such expenses had existed.

The restrictions existing in the Revised Statutes, which the act of 1884 had perpetuated, in conferring discretion upon the Secretary of the Treasury to fix compensation of shipping commissioners, were those contained in sections 4594 and 4507, namely, first, that the

salary, fees, and emoluments should not exceed $5,000 per annum, and, secondly, that the shipping commissioner should lease, rent, or procure, *at his own costs*, the premises in which to do business.

I.

RENT.

It is thus apparently beyond controversy that whatever compensation was allowed the shipping commissioner by the Secretary of the Treasury, it was his duty therefrom to pay all rents. No authority is conferred upon him nor upon the Secretary of the Treasury to make the Government liable for nor to pay any such expenses of office. Especially is it obvious that the payment of rent was a burden resting upon the shipping commissioner when, as here, the allowance made by the Secretary reached the full limit of the statutory maximum. This claimant accepted his office with the statutes staring him in the face declaring that he should not be allowed an excess of $5,000, and that out of that allowance he must pay his rents, and he knew, presumptively, at least, that that was one of the burdens of the office which he accepted, no matter what attempt might be made by the Secretary of the Treasury to relieve him therefrom.

It is intimated in the opinion, although not apparent in the evidence, that during some of the earlier period of this man's service, the Secretary of the Treasury did in fact pay the rent of the quarters occupied by claimant, but this can not change the law, nor can it estop the

United States from insisting that any such allowance is in excess of claimant's rights. Such an allowance on the part of the Secretary of the Treasury, being unauthorized by law, can confer no rights upon the beneficiary of that unlawful act. (*Wis. Cent. R. R. Co.* v. *U. S.*, 164 U. S., 190.)

Neither can the fact that during another portion of his service he was permitted to maintain his office in a building belonging to the Government, for which no rent was paid by anyone, modify the law, when by reason of the exigencies of the public service such space in the public building is needed for other public purposes and he has returned to the position contemplated by the statute, which required him to procure, at his own cost, suitable quarters in which to conduct his business.

The day has long been passed in this country when the occupation of Federal offices was compulsory. The acceptance and retention of this office was entirely voluntary—and voluntary is far too mild a word—on the part of this claimant, and it does not lie in his mouth now, after having ardently sought and voluntarily accepted the benefits of this office, to complain because he shall not also receive other benefits which were forbidden to him by the law of which it was his duty to have knowledge.

Compensation of public officers is matter of strict right. The performance of service gives no right to compensation except within strict limits of law, and until claimant can point to a law which authorized and required that he should be provided a place in which to

conduct his business at the expense of the United States he has established no cause of action to recover this addition to the $5,000 per annum allowed him by the statute.

> Fees allowed to public officers are matters of strict law, depending upon the very provisions of the statute. They are not open to equitable construction by the courts, nor to any discretionary action on the part of the officials. (*U. S.* v. *Shields*, 153 U. S., 88, 91; *Rahm* v. *U. S.*, 66 Fed. Rep., 531.)

II.

GENERAL EXPENSES.

These items of general expenses are set forth in a bill of particulars to claimant's petition on page 5 of the record, and consist of stationery, telephone rentals, Maritime Register, ice, freight on blanks, safe deposit box, furniture, office fixtures, moving office, telegrams, and repairs.

Undoubtedly under the act of 1884 these expenses might have been paid by the Secretary of the Treasury from the surplus fees had he so decided. They probably could not, be paid by him after the passage of the act of 1886, which authorized him to pay nothing except compensation of clerks in addition to the compensation of the commissioner himself.

But, however that may be, the terms under which this claimant held his office from August, 1886, onward contained as one of its conditions, that out of the $5,000 per annum he was to pay just these expenses. The

court below, for some reason inexplicable consistently with the purpose to furnish this court the true state of facts, omitted in the second finding a very material part of the terms of this claimant's employment, although the court adopted the report of the referee with the letter attached which contained these exact terms. That letter is found in the record, introduced by the claimant, at page 9, which, so far as material, reads as follows:

> The Department on the 26th ultimo determined to allow you compensation as shipping commissioner at the rate of $4,000 per annum and one-half of the net surplus of the fees collected by you after the payment of salaries and expenses authorized, such compensation not to exceed the maximum limited by law, *it being understood that from such compensation you shall pay all your official expenses except for employees and rent*, and that the compensation and all expenses shall not exceed the aggregate of the fees collected and deposited during the year.
>
> You are therefore requested to forward an account of your receipts and estimated expenditures for the months of July and August and each month thereafter, showing on the debit side the fees deposited and upon the credit side the expenses in detail to be paid from the general fund for employees and rent and your compensation, which will include the expenses to be borne by yourself. These latter expenses, however, will be stated in detail in a separate column, as provided for in the inclosed form.

Under the law as it then existed the shipping commissioner was bound to accept the allowance made him by

the Secretary of the Treasury, and this claimant, of course, bound himself to such acceptance by continuing to hold the office from 1886, or earlier, up to 1893, during no hour of which period was he under any compulsion so to do.

By the terms of his contract, therefore, he agreed that out of the $5,000 which he has received during every year of that service "he was to pay all his official expenses, except for employees and rent." The fact that the statute required him also to pay his rent, if any, out of this fixed compensation has no bearing upon this branch of the discussion. It can not change the terms under which he held the office, namely, that he should pay all the other expenses, except employees.

Nor did the Secretary of the Treasury attempt to contract in that letter that the United States would pay the rent, and had he so attempted it would have been invalid, because the law under which both he and the claimant were acting required that the claimant should pay it and provided no authority to the Secretary of the Treasury to pay it or commit the United States thereto.

The case of *United States* v. *Gunnison* (155 U. S.) holds that the shipping commissioner must accept and be satisfied with what the Secretary of the Treasury allows him, and that determination of such allowance is to be ascertained from the words of the order. That order of August 26 remained unrevoked and unmodified throughout the term of claimant's employment, as the court has expressly found. (Finding 4, p. 48.)

We therefore submit that claimant has received all to which he is entitled under the law and the terms of his employment, and that the judgments in his favor should be reversed.

JOSHUA ERIC DODGE,
Assistant Attorney-General.
SAMUEL A. PUTMAN,
Assistant Attorney.

Supreme Court, U.S.
FILED
MAR 8 1897
JAMES H. MCKENNEY,
CLERK.

164-664

Supreme Court of the United States.

OCTOBER TERM, 1896.

THE UNITED STATES,
Appellant,
against
JAMES C. REED,
Petitioner and Respondent.
No. 189.

THE SAME,
Appellant,
against
THE SAME,
Petitioner and Respondent.
No. 190.

Brief for Petitioner and Respondent.

G. E. P. HOWARD,
ELIHU ROOT,
Of Counsel.

C. G. Burgoyne, Walker and Centre Streets, N. Y.—1897.

Supreme Court of the United States.

OCTOBER TERM OF 1896.

THE UNITED STATES, Appellant, AGST. JAMES C. REED, Petitioner and Respondent.	No. 189.
THE SAME, Appellant, AGST. THE SAME, Petitioner and Respondent.	No. 190.

BRIEF FOR PETITIONER AND RESPONDENT.

Appeals from two several judgments rendered by the Circuit Court of Appeals for the Second Circuit affirming judgments rendered by the United States Circuit Court for the Southern District of New York in favor of the petitioner and respondent herein for Four thousand and thirty-three and $\frac{71}{100}$ Dollars and Three thousand one hundred and twenty five dollars respectively in two certain proceedings brought under the

Act of March 3rd, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States." (24 Statutes at Large page 505).

The judgments were for the amount of money which as Shipping Commissioner of the United States at the Port of New York the petitioner had disbursed between the first day of July 1886 and the first day of April 1893 in payment of expenses incident to the discharge of the duties imposed upon him as such Shipping Commissioner by the Statutes of the United States. (See pp 23 & 24 Record 2d case, No. 190).

The sole question involved in No. 189 is the right of the respondent to be reimbursed for the rent of the Shipping Commissioner's offices.

No. 190 involves both the question of rent and the further question of the right to be reimbursed for certain other expenses of the office. The facts shown in the two records upon which these questions depend are the same, and we shall accordingly follow the course taken in the brief for the appellee and argue the questions upon the record in the second case No. 190. All references herein are to the record in that case.

Statement of Facts.

I. On the 12th of May, 1884, the petitioner was appointed by the Circuit Court of the United States for the Southern District of New York, Shipping Commissioner at the Port of New York.

At that time the law relating to the duties and compensation of Shipping Commissioner was contained in the following sections of the Revised Statutes:

> SEC. 4501. The several circuit courts within the jurisdiction of which there is a port of entry which is also a port of ocean navigation, shall appoint a Commissioner for each such port which in their judgment may require the same, such Com-

missioners to be termed Shipping Commissioners, and may, from time to time, remove from office any Commissioner whom the Court may have reason to believe does not properly perform his duties, and shall then provide for the proper performance of his duties until another person is duly appointed in his place. Such courts shall regulate the mode of conducting business in the shipping offices to be established by the Shipping Commissioners as hereinafter provided, and shall have full and complete control over the same, subject to the provisions herein contained.

SEC. 4505. Any Shipping Commissioner may engage clerks to assist him in the transaction of the business of the shipping office at his own proper cost, and may, in case of necessity, depute such clerks to act for him in his official capacity; but the Shipping Commissioner shall be held responsible for the acts of every such clerk or deputy, and will be personally liable for any penalties such clerk or deputy may incur by the violation of any of the provisions of this title, and all acts done by a clerk as such deputy shall be as valid and binding as if done by the Shipping Commissioner.

SEC. 4507. Every Shipping Commissioner shall lease, rent or procure, at his own cost, suitable premises for the transaction of business, and for the preservation of the books and other documents connected therewith; and these premises shall be styling the Shipping Commissioner's office.

SEC. 4592. Fees not exceeding the sums specified in the tables marked "C" and "D" in the schedule annexed to this title shall be payable upon all engagements and discharges and apprenticeships effected before any Shipping Commissioner. Each Shipping Commissioner shall cause a scale of the fees payable to be prepared, and to be conspicuously placed in the shipping office, and may refuse

to proceed with any engagement or discharge unless the fees payable thereon are first paid.

SEC. 4593. Every owner, consignee, agent or master of a vessel engaging or discharging any seaman in a shipping office, or before a Shipping Commissioner, shall pay to the Shipping Commissioner the whole of the fees hereby made payable in respect of such engagement or discharge; and may, for the purpose of in part reimbursing himself, deduct, in respect to each such engagement or discharge, from the wages of all persons except apprentices, so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked "E" in the schedule annexed to this title.

SEC. 4594. In no case shall the salary, fees and emoluments of any officer appointed under this title be more than five thousand dollars per annum, and any additional fees shall be paid into the Treasury of the United Stetes.

These sections were taken from the Act of June 7, 1872.

The last section above quoted (Section 4594) was Section 66 in the Act of 1872. It was the last section of that act, excepting the formal concluding sections and appears to have been a general limitation upon all the provisions which went before it.

II. By the Act of June 26th, 1884, Congress amended this law as follows:

Sec. 27. That section forty-five hundred and one of the Revised Statutes is hereby amended so as to read as follows:

"Sec. 4501. The Secretary of the Treasury shall appoint a commissioner for each port of entry, which is also a port of ocean navigation, and which, in his judgment, may require the same;

such commissioner to be termed a shipping commissioner, and may, from time to time, remove from office any such commissioner whom he may have reason to believe does not properly perform his duty, and shall then provide for the proper performance of his duties until another person is duly appointed in his place; provided, that Shipping Commissioners now in office shall continue to perform the duties thereof until others shall be appointed in their places. Shipping Commissioners shall monthly render a full, exact and itemized account of their receipts and expenditures to the Secretary of the Treasury, who shall determine their compensation, and shall from time to time determine the number and compensation of the clerks appointed by such Commissioner, with the approval of the Secretary of the Treasury, subject to the limitations now fixed by law. The Secretary of the Treasury shall regulate the mode of conducting business in the shipping offices to be established by the Shipping Commissioners as hereinafter provided, and shall have full and complete control over the same, subject to the provisions herein contained; and all expenditures by Shipping Commissioners shall be audited and adjusted in the Treasury Department in the mode and manner provided for expenditures in the collection of customs. All fees of Shipping Commissioners shall be paid into the Treasury of the United States, and shall constitute a fund which shall be used under the direction of the Secretary of the Treasury to pay the compensation of said Commissioners and their clerks and such other expenses as he may find necessary to insure the proper administration of their duties."

23 Stat. at Lge., p. 59.

Thereafter your petitioner was continued in office by

appointment of the Secretary of the Treasury under the Act of 1884 and continued in the discharge of his duties until after the first of April, 1893.

III. About the 12th of September, 1884, he received from the Treasury Department the following communication :

"TREASURY DEPARTMENT,
" BUREAU OF NAVIGATION,
" SEPT. 12, 1884.

" JAMES C. REED, ESQ.,
" U. S. Shipping Commissioner, 187 Cherry Street, New York City :

" SIR—The Department, on the 26th ultimo, determined to allow you compensation as Shipping Commissioner at the rate of $4,000 per annum and one-half of the net surplus of the fees collected by you after the payment of salaries and expenses authorized, such compensation not to exceed the maximum limited by law, it being understood that from such compensation you shall pay all your official expenses except for employees and rent, and that the compensation and all expenses shall not exceed the aggregate of the fees collected and deposited during the year.

" You are, therefore, requested to forward an account of your receipts and estimated expenditures for the months of July and August and each month thereafter, showing on the debit side the fees deposited and upon the credit side the expenses in detail to be paid from the general fund for employees and rent and your compensation, which will include the expenses to be borne by yourself. These latter expenses, however, will be stated in detail in a separate column, as provided for in the enclosed form.

" Please certify, at the bottom of the account, that it is correct.

"A certificate should accompany the account, from the Clerk of the U. S. Circuit Court, showing that bond has been filed by you, and oath taken as prescribed by law.

"In addition to the account above mentioned, you will forward the monthly returns required by the circular of July 21, 1884, on forms 16, 18 and 19, general customs catalogue, unless you have already done so.

"An appointment as disbursing clerk is transmitted herewith, and a form of bond, which you will please execute, and return to this office with your account.

"Very respectfully,

"T. B. SANDERS,

"Deputy Commissioner."

(3 inclosures.)

Record pages 9 to 10.

Under the appointment and the arrangement designed to be created by the foregoing letter the petitioner rendered regularly monthly accounts, charging in the form therein prescribed against the fees earned in his office both the rent of the office occupied by him and all the other expenses of the character included in the present judgment, and all of these expenses were regularly allowed to him by the Secretary of the Treasury down to and including the month of June, 1886.

Record, pages 10 to 12.

In June, 1886, offices were provided for the Shipping Commissioner of New York in the Barge Office, a Government building at that port. He removed to the Barge Office, and the expenses of his removal were audited and allowed by the Secretary of the Treasury under date of June 18, 1886.

Record, page 22.

IV. On the 19th of June, 1886, the law was further amended as follows:

CHAP. 421. An act to abolish certain fees for official services to American vessels, and to amend the laws relating to Shipping Commissioners, seamen and owners of vessels, and for other purposes.

§ 1. *Be it enacted by the Senate and House of Representatives of United States of America in Congress assembled*, that on and after July first eighteen hundred and eighty-six, no fees shall be charged or collected by Collectors or other officers of customs, or by Inspectors of steam vessels or Shipping Commissioners for the following services to vessels of the United States, to wit: Measurement of tonnage and certifying the same, issuing of license or granting of certificate of registry, record or enrollment, including all endorsements on the same and bond and oath, endorsement of change of master, certifying and receiving manifest, including master's oath and permit, granting permit to vessels licensed for the fisheries to touch and trade, granting certificate of payment of tonnage dues, recording bill of sale, mortgage, hypothecation or conveyance, or the discharge of such mortgage or hypothecation, furnishing certificate of title, furnishing the crew list, including bond, certificate of protection to seamen, bill of health, shipping or discharging of seamen, as provided by title fifty-three of the Revised Statutes and section two of this act; apprenticing boys to the merchant service; inspecting, examining and licensing steam vessels, including inspection certificate and copies thereof; and licensing of master, engineer, pilot or mate of a vessel; and all provisions of law authorizing or requiring the collection of fees for such services are repealed, such repeal to take effect July first, eighteen hundred and eighty-six. Collectors or other officers of customs, in-

spectors of steam vessels and shipping commissioners who are paid wholly or partly by fees shall make a detailed report of such services, and the fees provided by law, to the Secretary of the Treasury, under such regulations as that officer may prescribe; and the Secretary of the Treasury shall allow and pay, from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the passage of this act; also such compensation to clerks of Shipping Commissioners as would have been paid them had this act not passed; provided, that such services have, in the opinion of the Secretary of the Treasury, been necessarily rendered.

24 Stat. at Large, p. 79.

V. After the passage of this last statute the Secretary of the Treasury refused to allow to the petitioner any of his expenses whether for rent or otherwise upon the ground that Congress had failed to make any appropriation.

Record, pages 14, 15, 23.

VI. In the meantime the rooms in the Barge Office being required for other purposes the Shipping Commissioner was required to leave and secure other offices in which to perform his duties, the rent and all expenses of which he continued to pay out of his own pocket until the termination of his term of office. The official communications upon this subject appear on pages 25 to 27 of the record. The letter of the Secretary authorizing the securing of the new quarters was as follows:

" (Telegram.)

" WASHINGTON, D. C., April 5th, 1890.

" U. S. SHIPPING COMMISSIONER,
" New York:

" Barge Office will probably be occupied for emigration purposes temporarily only. The Pearl street quarters may be secured as suggested in your telegram of yesterday, and, if practicable, arrangements may be made for storing seamen's baggage in basement Army Building opposite. All expenses, removal, rent, alterations, repairs, etc., must be borne by you, no appropriation by Congress being available, so far as Department can ascertain.

" W. WINDOM,
" Secretary.'

Record, p. 27.

VII. On the 8th of December, 1890, the Secretary of the Treasury addressed a communication to the Speaker of the House, as follows:

" TREASURY DEPARTMENT,
" WASHINGTON, D. C., December 8, 1890.

" SIR—I have the honor to invite your attention to the fact that there is no appropriation for the expenses for the offices of the United States Shipping Commissioners. Section 27 of the Act of June 26th, 1884, authorized the Secretary of the Treasury to pay expenses of shipping offices, but this provision was not followed in Section 1 of the Act of June 19th, 1886, abolishing fees in such offices, said section authorizing only the payment of the Shipping Commissioner's salary and the compensation of his clerks, without reference to other expenses. The maximum compensation allowed to any Shipping Commissioner under the law

is $5,000, where the fees reported are sufficient for the payment of that amount, and the payment by the Commissioner therefrom of the cost of the rent, heating and other expenses might take a large portion of the amount.

"A copy of the letter dated October 15th, 1890, from the United States Shipping Commissioner at New York, is enclosed herewith, as showing his objection to the existing legislation upon the subject.

"Respectfully yours,

"W. WINDOM,

"Secretary."

Record, p. 18.

The letter from the petitioner referred to by the Secretary in the foregoing communication enumerates the same items and expenses which are included in the present judgment, and calls attention to the fact which the Secretary mentions, that his necessary expenses are liable to practically deprive him of compensation.

Record, pages 18 to 20.

VIII. On the 12th of February, 1891, the Shipping Commissioner addressed another letter to the Secretary of the Treasury upon the same subject, and on the 14th of February, 1891, the Secretary transmitted it to the Speaker of the House with the following communication:

"TREASURY DEPARTMENT, OFFICE OF THE SECRETARY.

"WASHINGTON, D. C., February 14, 1891.

"SIR—Referring to the communication of the Secretary of the Treasury of December 8th, 1890, inviting the attention of Congress to the fact that there has been no provision for the payment of the expenses of the office of the United States

Shipping Commissioners since June 30th, 1886, and to the copy of a letter from the shipping commissioner at New York regarding the expenses of that office (accompanying said communication), I have the honor to state that, in my opinion, a necessity exists for an appropriation to cover such expenses, and I respectfully recommend that the following clause be inserted in the general deficiency bill:

"Five thousand dollars, or so much thereof, as may be necessary, to reimburse the Shipping Commissioner at New York for his expenditures for office fixtures, books and stationery, heating apparatus and fuel, telephone service, office rent, and other expenses connected with the administration of his office, from the first day of July, 1886 (at which time the provision for the payment thereof by the Treasury Department was omitted in the Act of June 19th, 1886), to the first day of July, 1891; and also the further sum of two thousand and five hundred dollars, or so much thereof as may be necessary, for similar expenses that may have been or may be incurred by shipping Commissioners at other ports during said period. Such expenses to be audited and such reimbursements to be made under the direction of the Secretary of the Treasury.

"Respectfully yours,

"A. B. NETTLETON,

"Acting Secretary."

Record, page 16.

IX. At all times and during every year from 1884 to 1893 inclusive, the fees earned by the Shipping Commissioner of New York largely exceeded both the allowance of $5,000 for salary, the salaries of the employees, the rent and all other expenses which are included in the present judgment.

Record, pages 10 to 13.

X. It is not disputed that the expenses included in the judgment were proper and necessary to the performance of the duties imposed upon the Shipping Commissioner and actually incurred and paid by him.

It has never been disputed that these expenses would have been allowable and payable if the Act of 1884 had continued in force, just as similar expenses were in fact regularly allowed while that act was in force.

Until after the commencement of this proceeding no claim or suggestion was ever made that there was any other reason for not allowing and paying them than the omission of the Act of 1886 to make a specific appropriation therefor.

ARGUMENT.

FIRST.

The scheme of these different statutes is simple and intelligible.

I. Under the Revised Statutes the Shipping Commissioner collected all the fees, paid all the expenses, reserved $5,000 for his own salary or emolument and paid the balance, if any, into the Treasury.

II. Under the amendment of 1884 the Shipping Commissioner collected the same fees but paid them into the Treasury, and he rendered a monthly account of all his expenditures to the Secretary of the Treasury, who audited and adjusted the expenditures and paid them out of the Treasury, and who also paid out of the Treasury to the Commissioner the compensation determined by the Secretary.

III. Under the Act of 1886 fees to the Shipping Commissioner were abolished, but the Commissioner was to continue his monthly reports of the services and fees which would have been earned, and the Secretary of the Treasury was specifically required to pay from any money in the Treasury not otherwise appropriated to the Shipping Commissioner and his clerks *the same compensation which would have been paid them had the Act of 1884 continued in force.* The act is silent as to the payment of the expenses of the office which had always theretofore been paid by the Government.

(a) Under the Revised Statutes by the Commissioner's deducting them before turning his balance into the Treasury.

(b) Under the Act of 1884 directly out of the Treasury after adjustment and audit by the Secretary.

SECOND.

It is plain that when a Shipping Commissioner's compensation was fixed by the Secretary of the Treasury under the Act of 1884 (as was the case here), and remained unchanged by any subsequent determination of the Secretary (as was the case here), he cannot, under the Act of 1886, be required to pay out of his compensation expenses of the office which before the Act of 1886 were paid by the Government, for in that case he would no longer receive the same compensation, and the Act of 1886 requires that he shall receive the same compensation.

It before the Act of 1886 the Commissioner received $5,000 for services and the Government paid the rent, while after the Act of 1886 he received $5,000 and was forced to pay the rent himself, he would not be receiving $5,000 "compensation for said services," but $5,000 less the amount of the rent.

The same course is true as to all expenses which the Government bore under the Act of 1884.

The learned Attorney-General calls attention to the fact that under the Revised Statutes the Shipping Commissioner was to lease, rent or procure at his own cost the premises in which to do business. This is true. It is also true of all the other expenses of his office, but under that law he had all the fees of the office from which to pay these expenses. As soon as the Government took this away from him by the Act of 1884, the Treasury assumed the payment of all expenses by the express mandate of the Act of 1884 itself. This is the language:

> "All expenditures by Shipping Commissioners shall be audited and adjusted in the Treasury Department in the mode and manner provided for expenditures in the collection of customs. All fees of Shipping Commissioners shall be paid into the Treasury of the United States, and shall constitute a fund, which shall be used under the direction of the Secretary of the Treasury to pay the compensation of said Commissioners and their clerks, *and such other expenses* as he may find necessary to insure the proper administration of their duties" (23 Stat. at Lge., p. 59).

It follows that when the Government refused to pay the same necessary expenses which were paid under the Act of 1884 in addition to paying the same salary which had been paid under that act, there was a flat violation of the provision which insured to Mr. Reed a a continuance of the same compensation.

THIRD.

No intention to produce such a result is to be inferred from the silence of the Act of 1886 on the subject of expenses.

The rule of law is that, where an agent makes reasonable expenditures necessary for the performance of the duties required by statute, he is entitled to be reimbursed even in the absence of a statutory provision directing reimbursement.

The case of U. S. vs. Flanders, 112 U. S., 88, is conclusive on this point. There the United States brought suit against the defendants as sureties on the bond of an appointee. The appointee had done certain advertising, which, though authorized by statute, payment thereof had not been provided for by statute.

This advertising the appointee had paid for out of his private pocket.

His sureties claimed a set-off for that amount against their liability on their bonds. They contended that, as the advertising was done in pursuance of statutory authority, the Government was obligated to pay back the money so expended.

The plaintiffs "requested the Court to instruct the jury that, during the time Denison was collector, the law did not provide for the reimbursement to collectors of internal revenue of any amount expended by them for advertisements; and that, there being no proof that the Secretary of the Treasury had ever made any allowance to Denison for amounts expended by him for advertisements, nothing could be allowed to the defendants for advertising. The Court refused to give that instruction, but gave the following: That 'if, in accordance with the terms of the statute, defendant Denison was required, as collector of internal revenue, to make, and did make, in certain newspapers, certain advertisements, for which he was required to pay, and

did pay, and if, also, the jury found the amounts so paid were reasonable and proper amounts, he was entitled to a credit for the amounts so paid by him; although the Secretary of the Treasury had made no allowance to him therefor.'"

BLATCHFORD, J. said: "But we are of opinion that, as the statute required the advertisements to be made, the collector was entitled to a credit for the reasonable and proper amounts paid therefor, although such amounts were not formally allowed or certified."

See, also, Andrews v. U. S., 2 Story, 202.

FOURTH.

There is statutory authority for the United State to defray such expenses.

I. For assuming the Act of 1886 was altogether silent as to whether the United States should defray such expenses a proper and reasonable construction of that act would show that the provision of the Act of 1884 requiring the defraying by the United States of such expenses was not superseded by anything in the Act of 1886.

A. The text of the Act of 1886 did not show an intention to supersede parts not specifically touched upon.

(1) The Act of 1886 contained no express general repealing clause.

(2) It contained no specific amendment at all of the section of the Act of 1884 requiring the United States to meet such expenses.

B. The general purpose of the Act of 1886 was not such as to effect a repeal by implication of the Act of 1884.

For one statute to repeal another by implication it is necessary that there should be a clearly manifested intention to that effect based upon

(1) an irreconcilable conflict between the two, or

(2) a covering by the second statute of all the ground occupied by the former.

Red Rock v. Henry, 106 U. S., 596.
Tracy v. Tuffly, 134 U. S., 206.

(a) The Act of 1886 did not cover all the ground covered by the Act of 1884, for by hypothesis that part of the Act of 1884 which admittedly provided for the meeting of such expenses by the United States was entirely omitted from the Act of 1886.

(b) A comparative examination of the Act of 1884 and the Act of 1886 made in the light of preceding legislation on the same subject, would show no such irreconcilable purposes as would effect a repeal by implication.

The first Act bearing on this subject is the Act of 1872. That Act provided among other things, in effect, that fees should be charged by the United States Shipping Commissioner, and that he should receive a salary of $5,000 and no more, to come out of those fees after paying out of them the rent, clerk hire and other incidental expenses of his office, the amount of such expenses to be regulated by himself, any surplus fees remaining to be turned over to the United States Treasury. All the fees were to go primarily to the Shipping Commissioner, but his control was to be subject to the above conditions and limitations.

See *in re* Shipping Commissioner, 13 Blatchford, 339.

The Act of 1872 was amended by the Act of 1884. This latter Act provided, with reference to compensation, that all expenditures by Shipping Commissioners should be *audited and adjusted* in the Treasury Department of the United States, and that all fees charged should be deposited in the Treasury "and shall con-

stitute a fund which shall be used to pay the compensation of said Commissioners and their clerks, *and such other expenses as he may find necessary to insure the proper administration of their duties.*"

Under this statute the petitioner received $5,000 a year for his personal compensation, and also such additional amounts as were necessary to defray the incidental expenses of his office.

The essential difference between the Act of 1884 and the Act of 1872 is that under the former the fees, instead of going primarily to the Shipping Commissioner, subject to certain limitations and conditions, as under the Act of 1872, go immediately to the Treasury of the United States.

The Shipping Commissioner thus having no funds from which, *as an officer*, he can defray the expenses of the office and pay his own salary, the act provides the Treasury Department shall defray those expenses from the funds thus turned over.

Both acts recognize the justice and propriety of meeting the precise expenses in respect to which this claim is made, and both acts expressly make provision for defraying them, the only difference being as to the method adopted for attaining that end.

In short, both these acts, it will be noted, provided, among other things, first, for the charging of fees by the Shipping Commissioner, and, second, for the meeting by the United States of the expenses incident to the office of the Shipping Commissioner.

The Act of 1886, the one at present under discussion, amended the Act of 1884.

The primary purpose of that act, as its title makes apparent, was "to abolish certain fees for official services to American vessels, &c." Its object was to encourage American shipping. It made its change for that object and to that extent clearly changed the Act of 1884. But the provision of the Act of 1884 requiring the United States to meet the incidental expenses of Shipping Commissioner's office was clearly a matter

of detail. The duties of the Commissioner remained the same. This matter of detail applied exclusively to the performance of those duties, and had no connection with the policy of the statute. Obviously the policy of the legislation could be changed without changing a mere matter of detail concerning the performance of the duties of the office, or the payment of the expenses thereof.

II. But the Act of 1886 did intend that the United States should defray such expenses.

A. Following the Act of 1884, under which the compensation of the petitioner was fixed at $5,000, the discharging of these expenses expressly provided for and the duties of the position indicated, it continued those duties and expressly provided as follows:

> "The Secretary of the Treasury shall allow and pay from any money in the Treasury not otherwise appropriated, said officers such compensation for said services as each would have received prior to the passage of this act," &c.

Now, if after the passage of the Act of 1886 while continuing the duties and burdens of the office as they had existed before, and while giving the petitioner the same amount of money as compensation for his services as before, Congress should require the petitioner to defray out of that amount of money the incidental expenses of his office, (which he had not been obliged to do before) of necessity he would not be receiving in reality the same compensation as before. Clearly, therefore, Congress while intending to give the Shipping Commissioner the same compensation as before must have intended that the United States should defray such expenses.

The mere fact that such an intention with reference to these particular expenditures may not be expressed in the letter of the statute does not preclude it from being

in the intention of Congress and therefore a part of the statute.

> "Well-settled principles in the construction of statutes have established the proposition that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and that a thing which is in the letter of a statute is not within the statute, unless it be within the intention of the makers."
>
> *In re* Shipping Commissioner, 13 Blatchford, 339.

B. The terms employed in the Act of 1872 are stronger for compelling the petitioner to defray such expenses than those of the Act of 1886.

With reference to the defraying of such expenses, parts of the Act of 1872 provide as follows:

> "Any shipping commissioner may engage a clerk or clerks to assist him in the transaction of the business of the shipping office, *at his own proper cost*," &c.

And again it said:

> "Every Shipping Commissioner shall lease, rent, or procure, *at his own cost*, suitable premises for the transaction of business," &c.

In construing the meaning of these provisions the Court said in ~~the case of~~ *In re* Shipping Commissioner, 13 Blatchford, 339:

> "The true meaning of the provision as to 'his own proper cost' and 'his own cost' is this: The United States were creating an office and providing for the appointment of an officer, &c.
>
> "Duties were imposed upon such officer of such a character as to make it necessary that he should

have a permanent place of business, with clerks therein, and books of record open to be consulted at all times.

"It would therefore seem proper that the United States should pay out of the Treasury the salary of the officer, and the expense of clerks and premises and books.

"Instead of that, a system of fees is established, which fees the officer is to receive, and it is provided that the officer shall, at his own cost *as such officer*, having such fees of office, pay out of such fees, which otherwise would be his own, the expenses referred to, and that such expenses shall not be a charge on the Treasury of the United States."

C. If the petitioner is required to meet the incidental expenses of his office out of a fixed compensation of $5,000, he might in all probability be compelled to devote his entire income to that end. (See Record Second Case, p. 41.) Such a result would be contrary to reason and in the construction of a statute should be avoided if possible.

Ex parte Crow Dog, 109 U. S., 556.
Sutherland Statutory Construction, p. 206.

D. If the petitioner had to meet these expenses out of his salary that part of his salary which was so applied would be merely reimbursement, and would not be compensation for services. But the use of the word compensation in the three Acts of 1872, 1884 and 1886 means salary or emolument for personal services. This is shown in the Act of 1872 by the distinction there made between that part of the fees of his office which was to be taken to meet the incidental expenses of the office, and that limited part, which, after the above had been satisfied, was to go to the Commissioner for his personal compensation. The Act of 1884 following this distinction. And the Act of 1886, by pro-

viding for "such compensation, &c." as before, obviously meant to do so too.

(2) The word "salary" of itself excludes the idea of reimbursement.

'Sniffen vs. Mayor, 4 Sandf. (N. Y.), 193.

E. The omission in the Act of 1886 to include rent and other incidental expenses with "clerk hire" does not show by implication the intention that the United States should not make such payments.

In U. S. v. Flanders *(supra)* the statute reads in part as follows:

> "And there shall be further allowed to each collector his necessary and reasonable charges for stationery and blank books used in the performance of his official duties, which, after being duly examined and certified by the Commissioner of Internal Revenue shall be paid out of the Treasury."
>
> In dealing with these words the Court said:
>
> "In the present case, the statute required the advertisements to be made, and there is nothing in it which implies that they are to be paid for out of the compensation to be allowed, or that they are not to be reimbursed because they are not named with stationery and blank books, or because 'advertising' was first inserted in the Act of 1865."

FIFTH.

There can be no possible doubt that the payment of rent by the Government and not by the Commissioner was a part of the contract for his compensation under the Act of 1884.

So that the payment of rent by the Commissioner instead of by the Government would be a change in his compensation.

Under the head of rent is included, of course, whatever is necessary to provide suitable quarters in which to do the Government's business required of the Commissioner such as the cost of moving from one office to another and necessary fittings of a new office under the authority of the Secretary.

Under this head is included the whole of the judgment recovered in No. 189 and more than half of the judgment recovered in 190.

1. That the provision of an office is "necessary to insure the proper administration of the Shipping Commissioner's duties" is manifest.

This was recognized by the Secretary of the Treasury in regularly allowing the Commissioner's charge for rent and incidental expenses under the Act of 1884.

2. ~~That~~ The payment of such an expense was expressly required by the Act of 1884.

3. That rent should be paid by the Government was expressly provided in the letter of September 12, 1884, from the Commissioner of Navigation, stating the determination of the Secretary of the Treasury as to the Shipping Commissioner's compensation.

Supra, page 6.
Record, page 9.

4. Each monthly auditing of the rent account by the Secretary of the Treasury under the Act of 1884 was a new determination that the compensation of the Commissioner was to be the sum allowed *plus* rent, and not that sum minus rent.

SIXTH.

The learned counsel appeals to the letter of September 12th, 1884, showing that all other expenses besides rent and salaries of employees were to be paid by the petitioner out of his compensation, and not paid by the Government in addition to his compensation. This proceeds upon an erroneous construction of the latter.

1. It is evident that the Secretary of the Treasury himself did not so construe that letter, for immediately following it he audited and allowed those very expenses for the months of June and July upon the accounts called for by the letter itself, and every month thereafter, so long as the Act of 1884 was in force, he audited and allowed them in addition to the maximum salary, which the fees at the port of New York justified.

~~Why~~ did the department put any such construction upon that letter when in 1890, and again in 1891, it appealed to Congress to remedy the injustice which it was erroneously supposed the omission of the Act of 1886 compelled the Secretary to inflict upon the Shipping Commissioner.

2. A fair reading of the letter itself in view of the existing circumstances leads to the same construction which was put upon it by all parties concerned at the time.

It must be observed that the Act of 1884 which had just been passed, had created a general fund in the treasury, composed of the fees paid by all the Shipping

Commissioners in the country, and that out of this general fund were to be paid the salaries and expenses of all the Shipping Commissioners indiscriminately, so that a surplus from one port would swell the fund out of a deficiency which from another port might be made up. This system superseded the old system of the Revised Statutes under which the special fund created at each port could be drawn upon for the salary and expenses at that port.

This letter, somewhat obscure and confused in its expressions, is manifestly endeavoring to discriminate between the compensation and expenses which are to be limited by the amount of earnings at the particular port of New York on the one hand and the expenses which are to be paid out of the general fund without reference to the amount of those earnings on the other.

The Commissioner is accordingly required to forward monthly an account of receipts and estimated expenditures, showing on the debit side the fees deposited and on the credit side two classes of expenses in separate columns—one, expenses to be paid from the general fund for employees and rent and the Commissioner's compensation; the other column, expenses to be borne by the Commissioner. And it is provided that "the compensation and all expenses shall not exceed the aggregate of the fees collected and deposited during the year." It would certainly be extraordinary if the expenses to be borne by the Commissioner, which were thus to be stated in a separate column, and which were included in the limits fixed by the last-mentioned provision applied to expenditures which the Commissioner made out of his own pocket and with which the Government had no concern. It is much more natural to suppose that these particular expenses which are thus contrasted with those to be paid from the general fund mean expenses, the payment of which is to be specifically imposed upon the office of Shipping Commissioner rather than upon the individual. This view

is sustained by the opening provision of the letter which fixes the compensation of the Commissioner at $4,000 per annum and one-half of the net surplus of the fees collected by him after the payment of salaries and expenses authorized; that is to say, the Commissioner is to state his expenses to the Secretary in two classes, and after the payment of all the expenses authorized he is to have $4,000 and one-half of the net surplus of the fees collected, not exceeding $5,000 in all. The expression "it being understood that from such compensation you shall pay all your official expenses except for employees and rent" at first appears to be inconsistent with the provision fixing the compensation as being such an amount after the payment of expenses authorized. It is, however, readily reconciled with that provision by applying it to the surplus upon which depends the compensation in excess of $4,000. It is equivalent to saying that out of this surplus, which is available for compensation, these particular expenses shall be taken before the compensation is estimated. The whole letter exhibits a cautious piling up of separate sefeguards, and they appear to be stated in the inverse order.

The compensation is to be $4,000, plus one-half the net surplus of fees after the payment of salaries and expenses authorized.

This, however, is subject to the limitation

(a) that the compensation and all expenses shall not exceed the aggregate of the fees collected and deposited during the year. It is also subject to the limitation

(b) that from this fund assigned to compensation—that is to say, net surplus—shall be taken all the official expenses except for employees and rent, while employees and rent are to be charged up against the general fund. It is also subject to the limitation

(c) that the compensation shall not exceed the maximum limited by law.

SEVENTH.

The judgments below should be affirmed.

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Elihu Root,
Of Counsel with Petitioner & Respondent.